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Editorial Perspective

Police Reforms: Internal Reforms Need Not Wait for General Reforms

The issue of police reforms keeps engaging, mostly the media and the experts, from time to time without much success or change. The latest phase started due to reiteration in early September 2018 of its earlier orders (2006) by the Supreme Court regarding the procedure for the appointment of the DGPs of the States as one of the State's had not followed the norms. The subject of police reforms in the country has wide support across the board including NGO's, Courts and social groups. Its urgency had been underscored by the landmark judgment (2006) by the Supreme Court in petition filed by Prakash Singh and N.K. Singh, issuing a number of directions to the State governments and the Centre to ensure effectiveness and efficiency of the force, security of tenure for the DGP's and others and protecting the police from political and other extraneous influences. Since then Prakash Singh has pursued the matter with commendable doggedness by public campaigns and repeatedly approaching the Supreme Court itself. However, the results have been mixed to discouraging. This warrants a deeper understanding of the reasons behind the reluctance and indifference from the executive, politicians and the State governments, (police is a State subject) without going into the details already available to the readers through the articles in the issue.

The imperative for police reforms is implicit in its central role in administration of criminal justice system; being the most visible face of the government at the cutting edge level, and prime instrument of the government in maintaining law and order and ensuring rule of law. Thus, the Centrality of its role and significance is undisputed. There have been any number of commissions starting from the Second Police Commission, 1902 by the Central and State governments. The most important being the National Police Commission (1977-80) which

submitted eight volumes of comprehensive reports fated to be consigned to the shelves and only used for quotes by the interested. The result is that the police continues to be governed by the Police Act of 1861, a colonial relic serving the British imperial interests, much as the whole colonial administrative structure which we inherited at Independence, starting from the India Act 1935 and its various outcomes. We continue to question and admire the British rule failing to get rid of its 'anti people' foundations, despite a number of administrative and criminal justice reforms commissions. Thus, the people continue to be governed by an administration which has an elitist and feudal mindset and at ground level not at ease with the "citizenship" rights of equality enshrined in the Constitution. A model Police Act draft prepared by Soli Sorabjee, former Attorney General in 2006, remains unimplemented for various reasons.

What militates against the police reforms is this general apathy of governance and its poor image among the citizenry. Its reform can only be part of an overhaul of the whole administrative structure and cannot be an exception. Any change threatens the current political and the governance culture. Hence, all reforms have to be in tids and bits and under extreme pressure.

Any police reform and autonomy, threatens the current political/ executive hold over it and its misuse for political gains. The resistance is also justified by the prevalent reputation of the police as inefficient, corrupt and oppressive force which has utterly failed to win public trust and confidence (Police Commission 1902). Nothing much has changed since then. Image is an important issue which the police hierarchy tends to play down, but it looms large in public mind. Media coverage of involvement of policemen, both ex and working in various crimes is a worrying factor. Thus, mix of prevalent politico-executive partisan interest and negative image of the police are the main obstructions in the quest of police autonomy and independence.

There is a political angle as well. The States consider the directions of the Supreme Court, including for a new Police Act, as an interference in the federal structure of the Constitution as the police is a State subject. The Chief Minister of the Punjab stated this publicly after the Supreme Court directive in September 2018.

Besides any administrative reform is not unidimensional exercise. Any Police Reform can only be part of the larger reform of the criminal justice system. In case of the police, it suffers from immense

infrastructural and manpower deficiencies and inhuman and long working hours. The Supreme Court directives (2006) only address the issues of tenure and functional autonomy. The judgement does not talk about constabulary, which constitutes 2/3rd of the sanctioned strength of 2.26 million (actual strength 1.72) and its working and living conditions and career prospects. The demonisation of the police in the country is rather unfortunate, as it ignores the hard work they put in to uphold the law of the land and 35000 of them having scarified their lives in the line of duty since Independence. Blaming the political interference is only a part of the problem. Police force faces many problems, some to be addressed by the government and some by themselves. In fact, there is lot more to be done to make the police efficient and effective beyond the Supreme Court directives. These can happen only if the senior police hierarchy, even while pursuing reforms, turns its attention to what can be done internally by toning up the culture and content of functioning. A lot can be achieved with minimum external help. It only requires will and determination. Attitudinal change towards citizenry and optimum utilization of resources should form the bedrock of internal reforms.

Then what can the police do internally to help itself and its quest for becoming “people’s police,” an oft-mentioned term now and transit from enforcement to service? Some of these could be the following:

(1) The police administration is currently officer-centric and senior officers often have their own way of working particularly in the field of law and order. It ought to be system-centric rather than officer-centric.

(2) The police reform campaign is mostly led by retired officers and serving, bright young officers should be encouraged to contribute in internal reforms/practices, in the field of crime prevention, investigation and law and order. It calls for easing the hierarichal monopoly of knowledge and wisdom.

(3) Upgradation of the skill of the huge constabulary, 2/3rd of the force, which has now better educational qualifications, to make up for the shortage of investigating manpower. Empowering and training the constabulary, and reducing its intake in civil police can be a game-changer. And it can be done internally.

(4) Improving the working of policemen by innovative measures and pressure on State governments to fill in the vacancies. Mumbai police is already implementing 8-hour work day which can be a great

relief to the force. While the BPR&D and some NGO's have done lot of research in this area, practicality and implementation remain a problem. The State Police Chiefs should ask bright young officers and subordinate field officers to come together to fashion innovative ideas and implement these. In brief, a little democratisation of inputs from the field could be beneficial.

(5) Recruitment and training remain another problem area of policing. Corruption ridden mass recruitments in some States have burdened the force with a long-term malaise. Yet even a bad tool can be improved by good training. Besides the professional skills, the training programme, of even constabulary should emphasise on social aspects of policing like citizenship rights, secular and neutral behaviour and incorporating sociologists/NGO's in such programmes, will help build public opinion in favour of police reforms and address to an extent the universal problem of police behaviour with people.

(6) The police behaviour with people remains another challenge. Any programme of police-public interface should include more subordinate/field officers, who interact with people professionally. The present schemes tend to be senior officer-centric. This image deficit cannot be addressed only by PR strategy, but by overall change in pattern of how the police respects the citizenship rights of the people.

A number of other points find mention in the articles in this issue. The point is that the police leaders should first do what they can internally on their own, while the campaign for a larger police reforms, which is unlikely to happen in short run, continues. It will not only improve the police functioning, but also have favourable fallout on its quest for major reforms.

—J.N. Roy

Forgetting the Voiceless

Patricia Mukhim*

In a country as large and diverse as India, where the air is rent by loud noises from many competing groups, it is easy to forget those who do not have the bandwidth to flag their issues and make it important enough for the band waves to capture. Closer home, in Assam, tomes have already been written and perhaps many more will be fleshed out on the recently completed exercise – the National Registration of Citizens (NRC). And there is need for divergent views to appear on this contentious exercise, any way one looks at it. Indeed, there are several perspectives to this issue with claims and counter claims of indigeneity even while others question what that implies. Again for a country like India, the word ‘indigenous’ can be problematic because if that word was used to claim ‘*a priori*’ right to citizenship then there are people with more authentic claims to being indigenous to Assam.

However, it is not my intent to get into a topic that has already generated a lot of heat but thrown little light as yet on what happens to the four million who have fallen through the NRC cracks. The point of this article is to take a look at one of the tribes that derive their name from the trade they practice – namely the Tea Tribes or the Adivasis who are the backbone of the Tea Industry in Assam but who suffer the worst discrimination from the government and the Tea Industry. This tribe finds itself excluded from the consciousness of the State and the media.

In October 2015, four tea garden labourers in the Barak Valley died of starvation. That news never made national headlines. Assam has about 800 tea gardens with roughly about eight million workers on

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these plantations. According to statistics, tea labourers constitute 20 per cent of the population of Assam. But there has always been a tussle between the State government and the tea garden owners, with each one dodging their responsibility of providing the basic needs of the tea labourers. In fact, one reason why the maternal mortality rate (MMR) of Assam continues to remain one of the highest in the country is primarily because of deaths of young mothers from amongst the tea labourers. Deaths occur due to complications during delivery, which is often carried out at home, since hospitals are either too far to reach or are poorly serviced or because the mother's health is too fragile. Since family planning and spacing of children is virtually rejected or not known and, therefore, the fertility rate is high, many young mothers are anaemic and die of complications during labour.

Assam's MMR today is nearly double the national average, with around 328 deaths per 100,000 live births. Dr. Tulika Goswami, Associate Professor, Community Medicine, Assam Medical College informed a researcher from the British Medical Journal, that three quarters of these deaths are in tea plantations. Dr. Reena Dutta Ahmed, head of the Gynaecology Department, Assam Medical College says that 80 per cent of maternal deaths are from the tea gardens. Devjyot Ghosal of Scroll.in wrote an article that should indict the power holders in Assam. The article captioned, "Young mothers are dying in Assam's tea gardens – at a rate higher than anywhere in India," (July 23, 2016), Ghosal gives a graphic picture of the acute anaemia among young mothers in tea gardens. Dr. Reena Dutta Ahmed confirms this saying that a large number of women arrive at the hospital with a haemoglobin count which is as low as two or three grams (normal = 12-16 gm/dl). With such poor blood count it is a miracle that the women survive a child birth. Now if the MMR is frighteningly high amongst the women tea labourers, then infant mortality too is a matter of grave concern. Women with such poor health naturally give birth to babies with poor chances of survival. Hence, infant mortality is also on the higher side.

There are many reasons why so many women die during or just after childbirth. Several tea gardens are located too far away from a hospital, which means delays for pregnant women seeking medical care and more women delivering at home. This increases complications leading to death. It is educative but not surprising that three fourths of the women who die in tea gardens during pregnancy and childbirth are

between 20 – 30 years of age. Under the National Rural Health Mission's, Janani Suraksha Yojana programme, monetary incentives are given to rural women for institutional delivery. In Assam the amount is Rs 1400. But distance remains the challenge and there is also lack of awareness about this incentive.

Naturally there is a sense of futility and hopelessness amongst the tea garden labourers. Very few have been able to move out of their desperate circumstances and make a life away from the poverty and desperation they experience as a community. I recently interacted with the All Adivasi Students' Association of Assam who actually wanted to understand how they can get their stories to the media and why their problems get such scant attention. While news about the aspirations of the other tribes of Assam get prime space in newspapers and the electronic media, they claim that any news pertaining to their community is given short shrift. These young men and women want a better deal for their own and that is not asking for too much. But that seems to be the case in a State where too much attention is paid to the so-called "indigenous" population.

The plight of the tea garden workers is compounded by the low literacy rate, at only about 16 per cent. In a situation where poverty is replicated with each new generation, poor literacy, poor health outcomes and many more children remaining outside educational institutions than inside, early marriages are inevitable. But Adivasis continue to suffer this neglect in silence for fear of being censured by their employers if they speak out. Besides, the Adivasis as a community are still largely dependent on the tea industry for their livelihoods. This makes them vulnerable to exploitation and limits their ability to participate in development. The tea industry relies heavily on women workers because they have the knack and gentleness to pluck the young tea leaves. It has rightly been observed that women carry the next generation of tea workers on their backs while they work, for, no one else would do that work.

I was once commissioned to study the performance of Anganwadi centres of Assam. The study found that tea garden labourers have minimal access to such centres, because most of them are situated outside the gardens, once again because tea labourers are expected to have their own support systems. Going through the statistics of Assam, I discovered that about 24 lakh children live in the tea plantation and only about 20 per cent of that population have access to pre-primary

education in Anganwadi Centres. The large majority of tea garden workers still live below the poverty line. Worse, they suffer economic and social exclusion. No wonder their stories find little space in the media.

It's hard to believe the level of discrimination faced by this community without which Assam's Tea Industry would collapse. Assam produces 55 per cent of India's total production of tea and has a workforce of nearly eighty lakh, because the industry is labour intensive. Yet, the labourers, mostly female get such a raw deal and continue to languish in poverty. Although the first labourers were brought to Assam from Jharkhand and Orissa by the British tea planters, they are now rightful citizens of the State. Unfortunately, they have also borne the brunt of ethnic conflicts. Quite a number of them who have suffered the onslaught of such conflicts live in camps even today. Does anyone even care? It's time the Adivasi community of Assam claim their rights too!

Citizenship Bill Revives Old Fears in Northeast

Pradip Phanjoubam*

The controversial Citizenship Amendment Bill 2016 has once again revived memories of a 150-year old festering sore in Assam, and indeed the entire Northeast region. Even as surveys are underway, efforts for the introduction of the Bill, an age old fissure between the two major linguistic communities of Assam, Assamese and Bengalis, has again come to the fore. Geographically, the broad dividing line, though far from watertight, is between the Brahmaputra and the Barak valley. By and large, Assamese speakers are generally opposed to the proposed Bill and the Bengali Hindus welcome it.

*The writer is editor, Imphal Free Press.

The Bill seeks to amend Citizenship Act of 1955, to make the route to Indian citizenship easier for illegal migrants, who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan. The Bill will also make these illegal immigrants not liable to be imprisoned or deported.

The Citizenship Act 1955 allows acquisition of Indian citizenship by naturalisation by an applicant who has resided in India during the last 12 months, and for 11 of the previous 14 years. The Bill relaxes the 11-year requirement to six years for immigrants belonging to these religions and three countries. Conspicuously absent from the list of favoured illegal immigrants are Muslims.

The exclusion of Muslims makes the new Bill sectarian, but the opposition in Assam is also for fear the Bill would go against the Assam Accord of 1985, which ended six years of agitation for the detection and deportation of foreigners from Assam, spearheaded by the All Assam Students Union. The accord fixes the cut off point to decide the illegality of an immigrant, as midnight of March 24, 1971, and this is irrespective of religion. The current effort in Assam to update the National Register of Citizens, NRC, to identify non-citizens is based on this principle. The argument is, the Bill would nullify the NRC exercise.

The question is, how would the segregation of Muslim from Hindu immigrants to term the former as illegal and the latter as legal affect Assam? History of the colonial period Assam, which then was almost the entire Northeast, with the exceptions of the independent kingdoms of Manipur and Tripura, may provide the answer. In fact, the communal frictions being witnessed today in the wake of the preparation for the Bill is strongly reminiscent of the partition period politics in Assam.

In a nutshell, Assam was annexed by the British and made a province of British Bengal with the signing of the Treaty of Yandaboo in 1826 between the British and the Burmese after the latter were militarily pushed out of Assam, which the Burmese had invaded and occupied. Assam then was agrarian and largely unfamiliar with the British administration, therefore the British brought in educated middle class Bengalis well acquainted with the British system from adjacent Sylhet district of eastern Bengal to run their lower bureaucracy. These Bengali middleclass, mostly Hindus, came to dominate Assam affairs, and treated the Assamese with a measure of condescension. In 1837 they influenced the British to make Bengali the official language as well as the medium of school education in Assam, arguing Assamese was a

dialect of Bengali. The nascent and weak Assamese middle class then were unable to thwart this but the seeds for future conflicts were sown. As the Assamese middleclass expanded and deepened, the resistance grew and in 1873, Assamese language was restored as the official language of five districts in the Brahmaputra valley. The following year, Assam was also separated from Bengal to be a chief commissioner's province.

There was all the while another bigger wave of immigrants into Assam from eastern Bengal, and these were largely land hungry Muslim Bengali peasants. The earlier Muslim immigrants easily integrated with the Assamese society, identifying themselves as Assamese speakers, but this soon changed with the changing colour of politics of the Indian freedom struggle, which soon shaped into a contest of religious nationalisms, pitting Hindus against Muslims. It was then Assam saw a unique triangular rivalry. At one level it was a clash of linguistic nationalism between Assamese speakers and Bengali speakers. At another it was friction between Hindus and Muslims as elsewhere in India.

At the time of partition, quite tragically, it was the former which held in Assam. The Hindu Bengalis in Sylhet desperately wanted to be included in India and one of the ways of ensuring this was for Sylhet to be treated as part of Assam for then the combined population of the province would be Hindu majority. But embittered by past rivalries between the two linguistic communities, and fearful of being reduced to a linguistic minority in their homeland, the Assamese, then under the leadership of Gopinath Bardoloi of the Congress, refused.

This fear of a demographic upset is shared everywhere in the Northeast, and they all are wary of the Citizenship Amendment Bill 2016. Meghalaya has openly denounced it, and indications are, most of the rest of Northeast would too. The fear is of unregulated immigration regardless of religious affiliations of the immigrants, or their citizenship status. Indeed, the adjective "illegal" often added to immigrants in this context, is a fig leaf to give this fear acceptability in the Indian national discourse. Nowhere is the nature of this fear more undisguised than in a 1929 memorandum submitted by the Naga Club formed by a very recently emerged Naga elite, to the Simon Commission, then preparing the grounds for administrative reforms in India. The third paragraph of this memorandum reads: "we have no social affinities with the Hindus or Musalmans. We are looked down upon by the one for our 'beef' and the other for our 'pork' and by both for our want in education..."

Police Reforms: An Unfinished Agenda

Prakash Singh*

A developing country needs a healthy criminal justice system and yet, tragically, the system appears to be disintegrating in India.

Criminal Justice System – Its Weakness

The criminal justice system rests on four pillars – the police, prosecution, judiciary and the jails. All these must be strong and inspire the confidence of the people. Unfortunately, the functioning of all these in India, today leaves much to be desired. The prosecution is inefficient, the judiciary is sluggish and the jails have become dens of corruption. But it is the failings of the police – its feudal character, archaic style, growing politicization and even nexus with the underworld – which are causing the greatest anxiety. It would be no exaggeration to say that police constitutes the central pillar of the structure, and its failure or even weakness could bring about a collapse of the criminal justice system.

The basic flaw of the police organization is that it is based on an antiquated legislation of 1861, which was enacted in the wake of the Revolt of 1857, essentially to subserve, uphold and promote the interests of the Raj. The police, as a matter of policy, was placed under the executive. The instructions of the imperial masters were to be carried out without any questioning. It was not surprising, under the circumstances, that the police was brutal in suppressing the freedom movement and had no qualms in subjecting its leaders to third degree methods. It was the ruler's police, not the people's.

* The writer was formerly Director General of Police, UP, DGP Assam, and Director General, Border Security Force. He has been campaigning for Police Reforms in the country.

Independence did not Usher in any Change

At the dawn of independence, it was expected that a new role, a new philosophy would be defined for the police, that its accountability to the law of the land and the people of the country would be underscored in unmistakable terms. But that was not to be and, as recorded by the National Police Commission, “the relationship that existed between the police and the foreign power before independence was allowed to continue with the only change that the foreign power was substituted by the political party in power.”

For some years, however, there was no problem, thanks to the quality of political as well as administrative leadership. The politicians were men of great stature, endowed with vision and committed to pursuing the national interests. The administrators were also thorough professionals, keen on playing their role in the independent India. The politicians drew from the professional experience and expertise of the civil servant who, in turn, benefited from the politicians’ commitment to democracy and secularism. There was mutual respect for each other, give and take in the pursuit of common objective of taking the nation forward on the road to progress and modernity.

As the years rolled by, however, there was unfortunately a qualitative change in the style of politics. The fire of idealism which had inspired the first generation of post-independent politicians and civil servants, started getting dim. Power became an end in itself, and gradually a symbiotic relationship developed between the politicians on the one hand and the civil servants on the other. Vested interests grew on both sides and, “what started as a normal interaction between the politicians and the services for the avowed objective of better administration with better awareness of public feelings and expectations, soon degenerated into different forms of intercession, intervention and interference with *mala fide* objectives unconnected with public interest.”

Emergency – Misuse of Police

It was around mid-sixties that the political leadership injected the concept of ‘commitment’ in administration. It caused havoc. Officers were selected and given key placements in consideration of their affinity and loyalty to the ruling party and its political philosophy. Their intrinsic merit and administrative qualifications were given secondary importance.

The disastrous consequences of this were seen during the Emergency (1975-77) when, as observed by the Shah Commission:

“...the police was used and allowed themselves to be used for purposes some of which were, to say the least, questionable. Some police officers behaved as though they are not accountable at all to any public authority. The decision to arrest and release certain persons were entirely on political considerations, which were intended to be favourable to the ruling party. Employing the police to the advantage of any political party is a sure source of subverting the rule of law. The Government must seriously consider the feasibility and the desirability of insulating the police from the politics of the country and employing it scrupulously on duties for which alone it is by law intended.”

In its third and final report (1978), the Shah Commission warned that :

“...If a recurrence of this type of subversion is to be prevented the system must be overhauled with a view to strengthen it in a manner that the functionaries working in the system do so in an atmosphere free from the fear of consequences of their lawful action and in a spirit calculated to promote the integrity and welfare of the Nation and the rule of law.”

The overhaul suggested was, unfortunately, never taken up. The Bureau of Police Research and Development, in a research paper *Political and Administrative Manipulation of the Police*, published in 1979, warned that “excessive control of the political executive and its principal adviser over the police has the inherent danger of making the police a tool for subverting the process of law, promoting the growth of authoritarianism, and shaking the very foundations of democracy.” The warning went unheeded.

Police Commissions

Several State Police Commissions, at different period of time, suggested structural reforms in the department and emphasized the need to insulate it, from extraneous pressures, but their core recommendations were never implemented by the executive. The Government of India, in 1977, appointed a *National Police Commission* as it felt that “far reaching changes have taken place in the country” since independence

and “there has been no comprehensive review at the national level of the police system after independence despite radical changes in the political, social and economic situation in the country.” It was felt that “a fresh examination is necessary of the role and performance of the Police both as a law enforcement agency and as an institution to protect rights of the citizens enshrined in the Constitution.” The NPC submitted eight detailed reports between 1979-81, which contained comprehensive recommendations covering the entire gamut of police working. Its recommendations, however, received no more than cosmetic treatment at the hands of the Government of India.

As David H. Bayley said: “the rule of law in modern India, the frame upon which justice hangs, has been undermined by the rule of politics.” The Commonwealth Human Rights Initiative, which held a National Roundtable on Police Reforms in 2002, summed up the root of the problem in the following words:

“Governments over the years have manipulated the police for self-gain. Police has been used to put down opposition, to cover up failures of the ruling party and protect friends. Political interference is rife at the local level, in the higher echelons and in everyday functioning.”

Supreme Court’s Directions

The Supreme Court of India, in a landmark judgment on September 22, 2006, gave comprehensive directions on police reforms. Seven directions were given, out of which six were for the State governments and one for the Central government. The directions were as follows:

- i) State Security Commission:** To be constituted in every State to ensure that State government does not exercise unwarranted influence or pressure on the State police and for laying down broad policy guidelines. States were to adopt one of the three models recommended by NHRC, Ribeiro Committee or Sorabjee Committee. Members were to be chosen in such a manner that it functions independent of government control.
- ii) Selection and Minimum Tenure of DGP:** Director General of Police of the State to be selected by the State government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the UPSC on the basis of their length of service, very good record

and range of experience for heading the police force; and, once selected, he shall have a minimum tenure of at least two years irrespective of his date of superannuation.

- iii) **Minimum Tenure of IG Police and Other Officers:** All police officers on operational duties like IG i/c Zone, DIG i/c Range, SP i/c District and SHO should also have a prescribed minimum tenure of two years.
- iv) **Separation of Investigation:** The investigating police shall be separated from the law and order police in, to start with, towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas.
- v) **Police Establishment Board:** Such a Board comprising DGP and four other senior officers of the Department should be constituted to decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Dy. SP. The Board shall make appropriate recommendations to the State government regarding the postings and transfers of officers of and above the rank of Superintendent of Police. It will also function as a forum of appeal and generally review the functioning of the police in the State.
- vi) **Police Complaints Authority:** Police Complaints Authorities shall be set up at the State level to look into complaints against officers of the rank of SP and above and, at the district level, to look into complaints against officers of and up to the rank of Dy. SP. These will be headed by retired judges and shall look into complaints of serious misconduct by police personnel.
- vii) **National Security Commission:** The Central Government shall set up a National Security Commission to prepare a panel for selection and placement of Chiefs of Central Police Organizations, and also review measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised.

The aforesaid directions were to be complied with by the Central Government, State Governments and the Union Territories on or before

December 31, 2006. The time limit was subsequently extended till March 31, 2007.

Review petitions filed by the States of Gujarat, Karnataka, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh were dismissed by this Hon'ble Court on August 23, 2007.

The States have dilly-dallied in the implementation of the Hon'ble Court's directions. Even where the mandated institutions – the State Security Commission, Police Establishment Board and the Complaints Authorities – have been set up, their composition has been subverted, their charter diluted or their powers curtailed. There is arbitrariness in the appointment of DGP with several States not consulting the UPSC in the empanelment of officers. Police officers on operational assignments are shunted out for all kinds of administrative reasons before the completion of two years. There is tardiness in the separation of investigative and law and order functions of the police.

Thomas/Verma Committees

Justice Thomas Committee which was appointed by the Supreme Court to monitor the implementation of directions in the various States, in its report dated August 23, 2010, expressed “dismay over the total indifference to the issue of reforms in the functioning of Police being exhibited by the States.”

Justice J.S. Verma Committee, which was constituted in the wake of the brutal gang rape in Delhi on December 16, 2012, submitted a comprehensive report on Amendments to Criminal Law. It urged “all States to fully comply with all six Supreme Court directives in order to tackle systemic problems in policing which exist today.” It further made the following observations:

“We believe that if the Supreme Court's directions in Prakash Singh are implemented, there will be a crucial modernization of the police to be service oriented for the citizenry in a manner which is efficient, scientific, and consistent with human dignity.”

At Stake – Political Stability and Economic Reforms

What is at stake is not only the vitality and credibility of the police but the very survival of the democratic structure and the success of economic

reforms. The legislatures and the parliament have been infiltrated with criminals. The nexus between the politicians and criminals is undermining the authority of the State. The police are subjected to the indignity of paying obeisance to undesirable elements and even providing them security. People who should be behind the bars are protected by the country's elite commandos. A system which permits such aberrations is inherently faulty and has got to be changed. Mechanisms must be devised which safeguard the police from becoming a tool in the hands of unscrupulous politicians or oblige it to protect criminals.

The economic growth of the country also requires comprehensive improvement in the law and order situation. Investments would not be forthcoming if returns are not guaranteed. Financial irregularities have become the order of the day and we have any number of scams and scandals. Money is being laundered in a big way. Criminals are able to spread their operations beyond the national boundaries and move with much greater ease and frequency. Drug traffickers are extending their tentacles both in the direction of Golden Crescent and Golden Triangle countries. All this would need effective action, preventive as well as detective, by the law enforcement agencies. Police in its present form can hardly be expected to meet the challenges of the developing situation.

Present Status

- a) States which have passed executive orders have diluted the directions of the Supreme Court.
- b) The following 17 States have passed their own Police Acts: Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Meghalaya, Mizoram, Punjab, Rajasthan, Sikkim, Tamilnadu, Tripura and Uttarakhand.
The States have passed these laws essentially to circumvent the implementation of Court's directions. The Acts violate the letter and spirit of Court's directions.
- c) Government of India has also not shown sincerity in implementing the Court's directions. A Model Police Act was drafted by Soli Sorabjee Committee as far back as in 2006. The Government of India is yet to pass an Act for the Union territories on those lines.

The Supreme Court directions, it needs to be highlighted, are not for the glory of the police – they are to give better security and protection to the people of the country, uphold their human rights and generally improve governance. If sincerely implemented, they would have far reaching implications and change the working philosophy of the police. The Ruler’s Police would be transformed into People’s Police.

Other Aspects of Police Reforms

Apart from the core areas identified by the Supreme Court, reforms are urgently required in some other fields also:

1. Manpower: The manpower deficiencies should be met immediately. According to information placed before the Lok Sabha on July 26, 2016, we were short of more than half a million policemen on January 1, 2015. There were actually 1.72 million policemen across 36 States and Union Territories, whereas there should have been 2.26 million. During the last several decades, there has been a lop-sided expansion of the police forces. There has been exponential growth of the Central Armed Police Forces while growth of the State police forces has been at a slow pace.

2. Infrastructure: The shortfalls at the State level in respect of Transport, Communications and Forensics need to be made up. The police should have a good fleet of vehicles to meet their requirements. Communication facilities also need to be upgraded. It is ironic that while technology has made such advances, we still have police stations which have no telephones or wireless support. Forensics are an important area, but unfortunately most of the States have inadequate facilities.

3. Housing: The National Police Commission recommended that family accommodation should be provided to all the gazetted and non-gazetted officers. According to information available with BPR&D, as on January 1, 2016, only 5.92 lakh family quarters were available, which works out to about 25 per cent satisfaction level only. Housing has a direct impact on the welfare and morale of police personnel.

4. Working Hours: A police officer, under section 22 of the Police Act of 1861, is “always on duty,” which means he could be put on duty for any number of hours or any number of days at a stretch. This is humanly not possible. The policemen are nevertheless made to put in long hours of work. The National Police Commission, in its first report (1979), mentioned that “a job analysis conducted by the National Productivity Council has shown that the working hours of the subordinate

police officers range from 10 to 16 hours every day of seven days in a week.” A recent study (2014) sponsored by the Bureau of Police Research & Development on the *National Requirement of Manpower for 8-Hour Shifts in Police Stations* brought out a dismal picture of long hours of work for policemen. The BPRD Study calculated that 3,37,500 additional manpower would be required to introduce 8-hour shifts in all police stations of the country. This is not a very large number.

5. Training: As recommended by the Second Administrative Reforms Commission, the deputation to training institutions must be made more attractive in terms of facilities and allowances so that the best talent is drawn as instructors. Besides, training should focus on bringing attitudinal change in police so that they are more sensitive to citizens’ needs. Police training/refresher courses should be made mandatory for officers at different levels and made an essential pre-condition for their promotion. Army training institutes attract the best talent and officers look forward to undergoing training. A similar environment needs to be created in the police also.

6. Modernization: Modernization of police forces suffered a setback following the 14th Finance Commission recommendations, which increased the states’ share of central taxes from 32 per cent to 42 per cent. The Central government, as a follow-up measure, de-linked eight centrally sponsored schemes including the modernization of police from its support in 2015 on the ground that with higher devolution of resource to the States, they should be able to shoulder the additional burden. The majority of States however did not invest in the police with a result that modernization plans went in the deep freeze. The Government of India, realizing the importance of the project, recently approved a Rs.25000 crore internal security scheme to modernize the State police forces and enhance their capacity to combat terrorism. The umbrella scheme, Modernization of Police Forces (MPF), will be implemented between 2017 and 2020. The scheme has special provisions for women’s security, mobility of police forces, logistical support, hiring of helicopters, upgradation of police wireless, satellite communications, crime and criminal tracking network systems (CCTNS) and e-prisons.

7. Control Room: The police control rooms in the states need to be upgraded. There should be a universal number which people could dial in any part of the country for police assistance in an emergency, like 911 in US, 999 in UK or 112 in EU. MHA’s National Emergency Response System (NERS) needs to be given a push. Madhya Pradesh

and Uttar Pradesh have set up DIAL 100 Call Centres with elaborate standard operating procedures. Other States need to introduce similar arrangements.

8. Commissionerate System: The National Police Commission, in its sixth Report, recommended that in large cities, that is, those with a population of five lakhs and above and even in places where there may be special reasons like speedy urbanisation, industrialisation, etc., the system of Police Commissionerate should be introduced. The Commissioner should be a police officer of adequate maturity, seniority and expertise, and he should have complete authority over the force and be functionally autonomous. We may, in the present context, plan to have Commissionerate system in urban areas with a population of ten lakhs or more. There is fierce resistance to the Commissionerate system by the bureaucracy and it has been seen that even when the Chief Minister was agreeable to introducing the system, the bureaucracy managed to scuttle it. The resistance would have to be overcome in public interest.

9. CCTNS/ NATGRID: The Crime and Criminal Tracking Network and Systems is an ambitious project to network the police stations across the country. The project was sanctioned as far back as 2009 with the aim of establishing seamless connectivity among the 15,000 police stations and 5000 supervisory police officers. Funds to the tune of Rs. 2,000 crores were allocated for the project and it was to be completed by 2012. Its implementation has however been tardy. The CCTNS is a very useful project which would enable the police stations to exchange information on a whole range of subjects related to crime and criminals.

The National Intelligence Grid or NATGRID is meant to bolster India's counter-terrorism capabilities. The project entails combining 21 sensitive databases relating to domains such as banks, credit cards, cellphone usage, immigration records, motor vehicle registration, income tax records into a single database for access by authorized officers from the central agencies like the IB, RAW, CBI, DRI, and ED.

10. Police in Concurrent List: The founding fathers of the Constitution had placed "public order" and "police" under the State List of the seventh schedule. During the last nearly seven decades, however, the law and order situation in the country has undergone a sea change. There are threats to internal security which have inter-state and even international ramifications. Terrorism is sponsored from across the borders and there are outfits which have bases on our western and eastern flanks. Maoist insurgency has spread across vast areas of Central

India. It is simply beyond the competence of a State to handle these problems without the active involvement and support of the Centre. Even otherwise, the States are depending very heavily on the Union Government for the maintenance of law and order even of a routine nature. Communal riots, caste clashes, *mela* arrangements, inter-State disputes and similar other challenges necessitate deployment of Central Armed Police Forces. It would be in the fitness of things therefore if “police” and “public order” are brought on the Concurrent List of the seventh schedule of the Constitution. It would rationalize and give *de jure* status to what prevails *de facto* on the ground.

Concluding Observation

The life, liberty and well-being of large masses of Indian population are inextricably linked with reforms in the police. It has been rightly said that police reforms are “too important to neglect and too urgent to delay” and that “lack of reform is destroying India’s international credibility and reputation (and) is an obstacle to foreign investment, swift development and social justice.” A former Home Minister (Sri Indrajit Gupta), showed tremendous moral courage in exhorting the Chief Ministers “to rise above our limited perceptions to bring about some drastic changes in the shape of reforms and restructuring of the police before we are overtaken by the unhealthy developments.” Any further delay in the reforms would be a disservice to the country and a betrayal of its people.

Police Reforms in India: A Pipe Dream?

Kamal Kumar*

Media reports about the observance of “Police Reforms Day” by the Indian Police Foundation last month (September 22) came as a feeble reminder of the need for reforms in policing in the country. The subject of police reform crops up like this, once in a while, but is forgotten soon enough every time, without occupying any worthwhile space in serious public discourse. Not even in the wake of reports, from time to time, about specific cases of serious police misconduct involving omissions or commissions on their part. Is it so because of inadequate appreciation on our part of the significance of good policing for the health of a vibrant democratic society with economic potential to grow as a world power? Or is it our sheer apathy towards the police and policing? Maybe a combination of both of these factors in varying measures.

Why Police Reforms?

Let us start with the question of why are police reforms needed in the first place? There are several reasons indeed, but the obvious first answer comes from the ugly image of police in our society. In common perception, the police in India are unprofessional, indifferent, irresponsible, insensitive, brutal and corrupt. This perception, even though a little too generalised, yet is not too wide off the mark either. The situation obviously needs improvement. Hence, the need for reforms.

Image or perception apart, good policing is a *sine qua non* for an orderly society with a healthy social and cultural climate. Economic

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progress also is directly linked with good policing since economic activity requires a climate of safety and security not just for the workers but also for investors. After all, no one would like to invest in a State or country where occurrences of crime and breakdown of law and order are commonplace. Weighed against this parameter, the need for police reforms again becomes obvious.

Further, policing, in the traditional sense, is a law enforcement activity, and the police, an enforcement agency. However, policing in a modern-day democratic society can no longer be regarded as merely a law enforcement function but is a 'service' meant to cater to the needs of safety, security and well being of the community. And, the police organisation is the 'service provider' for those needs. The police agencies need to adopt this premise as their credo. And, that is also a core issue underlying the need for police reforms.

Finally, the most important factor reinforcing the need for reforms is that the police in India have inherited their structure, methodologies, and practices from their imperial past, which are clearly not suited to the policing needs of a liberal and vibrant society of contemporary democratic India. It is a historical fact that the edifice of the extant policing system in India is based on the foundations laid by the British in 1861, in the wake of our first war of independence, which suited their requirements of those times. The Police Act of 1861 was intended to create a police force for a colonial State, with the sole objective of facilitating smooth and orderly conduct of administration in a static and largely rural society, through ensuring domination of the 'Raj' and control over the native population. The underlying intention of the imperial regime was to create a police force that was isolated from the general populace; so it hardly mattered if the methods of policing led to creating any adversarial relationship between the police and the public. Policing had also to be done at the bare minimum cost to the exchequer, in terms of the salary structure, provision of equipment, and the other wherewithal. Interestingly, the police system introduced in India by the British was modelled not on their own contemporary police system, namely the famous Peelian Police, but on the Irish Constabulary, which was more of an occupational force than a public service. However, in India, the functioning of police still continues to be governed by the Police Act of 1861 (or its almost mirror-image adaptations by various States), even after so many decades of Independence.

Such was the level of efficiency of the force created by the Police Act of 1861 that the Second Police Commission, appointed some forty years later, in 1902, by the British Government itself, concluded in its report thus: “the police force is far from efficient; it is defective in training and organisation;; it is generally regarded as corrupt and oppressive; and it has utterly failed to secure the confidence and cordial co-operation of the people.” Alas! nothing was done by way of introducing remedial measures, in the remaining 45 years of the colonial regime. Going by the common perception, matters have not improved even thereafter, through the years of our Independence so far. The need for reform, though, has been seriously felt all along.

The Saga of Abortive Reform Initiatives

Someone has aptly described the case of police reforms in India as a Sisyphean saga. This really explains the tardy approach of our reform effort so far.

Police being a subject under List II (‘State List’) of the Seventh Schedule of the Indian Constitution, the onus of ensuring good policing naturally falls on the State governments. The infirmities and inadequacies of the police system and the need for reforms were also felt first by the States themselves. Thus, starting with Kerala in 1959, several States independently constituted their Police Commissions from time to time, to examine the ills dogging the functioning of their police forces and recommend measures for improvement. Following Kerala, several State Police Commissions engaged themselves with the task in West Bengal (1960-61), Bihar (1961), Punjab (1961), Maharashtra (1964), Madhya Pradesh (1966), Delhi (1966), Uttar Pradesh (1970-71), Assam (1971), Tamil Nadu (one in 1971, another in 2010, a yet another in 2006), and Andhra Pradesh (1984).

The Government of India too, concerned about the need for improvement in the efficiency and effectiveness of the police in the performance of its crucial role in a democratic polity, appointed several commissions and committees from time to time to go into the issues relating to reforms of the Indian police system, either exclusively, or as part of the national security infrastructure or administrative apparatus or the criminal justice administration of the country. In-depth studies for police reform were, thus, undertaken by several bodies, appointed at the national level, from time to time. These included (i) Gore

Committee on Police Training (1971-73), (ii) National Police Commission (1977-81), (iii) Ribeiro Committee on Police Reforms (1998), (iv) Padmanabhaiah Committee on Police Reforms (2000), (v) Group of Ministers on National Security (2000-01), (vi) Malimath Committee on Reforms of Criminal Justice System (2001-03), (vii) MHA Review Committee on Police Reforms (2005), (viii) Soli Sorabjee Committee on Model Police Act (2006), (ix) Prof. Madhava Menon Committee on Draft National Policy on Criminal Justice (2007), (x) the Second Administrative Reforms Commission (2007-08), and (xi) the Second Centre-State Relations Commission (2008-09) headed by Justice M.N. Punchhi.

All these expert bodies thoroughly examined the maladies afflicting the police functioning and proffered hundreds of recommendations on the needed reform measures. The eight volumes of Report of the National Police Commission (NPC), in particular, represent a comprehensive study of not just the existing structure, methodologies, and weaknesses of our police system but also the policing needs of the modern-day India – a progressive secular democracy, pursuing the goal of an economically strong and socially egalitarian society. The subsequent Committees mostly picked up the threads from the NPC Reports while working on the subject.

Alas! despite all the useful recommendations, made after meticulous study of all the maladies and problems, by these commissions and committees of the Central and State governments, the police in India still remain largely plagued by the ills and shortcomings of their colonial past, further multiplied manifold by the frailties that have piled up since then, in the absence of any earnest attempt at the implementation of the recommended reform measures.. Indeed, some nominal, piecemeal refurbishments have been effected here and there, but those have clearly failed to make any overall impact. Not only holistic implementation of recommendations has been conspicuously absent but also most of those relating to meaningful structural reforms have remained untouched so far.

Meanwhile, in September 2006, the Supreme Court of India also issued six specific and unambiguous ‘directions’ on police reforms to the State governments and (one to the Central government), in their verdict in a public interest litigation petition¹ filed by Shri Prakash Singh, a retired Director General of Police. After a lot of hemming and hedging, those clear-cut directions were ‘complied,’ but more in defiance

at least in spirit if not in letter. The Supreme Court also appointed (2008) a committee headed by Justice (Retd) K.T. Thomas to monitor the implementation of its directions. The Monitoring Committee, after a thorough review of the actual compliance of the directions on the ground, ruefully expressed in its report (2010), its 'utter dismay over the total indifference to the issue of reforms in the functioning of police being exhibited by the States.' The case is still being chased in the Supreme Court by Shri Prakash Singh, even after a lapse of 12 years since the judgment. Such has been the obduracy of the powers-that-be in their resistance to police reform!

What Next?

The issue before us, the citizenry, now is as to what is to be done in the face of this situation? Should the idea of police reforms be simply given a deep burial, only because it does not find favour with the powers-that-be? Would that really be an appropriate response in a matter involving such high stakes for us and our future generations?

Let us look at what all it takes for any reform process to be effectively rooted. It essentially requires contribution of one kind or another from various stakeholders. And, the stakeholders in efficient policing are first and foremost the public at large, then the political masters, and lastly the police themselves. Indeed, the political leadership, duly egged and abetted by the bureaucratic class, has been making no bones about their apathy (or shall we call it aversion or even abhorrence) to the cause of police reform. A majority of the political class has become so habituated to using, misusing and abusing the police that the issue of police reform now sounds as an anathema to them.

But, the interest of the other two classes of stakeholders can still be banked upon and harnessed for taking the matter forward. As far as the police are concerned, what is needed on the part of their leadership is a strong commitment to reform, along with due determination and a vision for change. Unfortunately, not all police officers, barring some progressive-minded ones, are reform-minded. Such officers may be in small numbers but the fact remains that the cries for police reforms in the country, from time to time, have generally been raised by police officers only, most of the times. Indeed, there are also any numbers of examples of internal reform measures having been initiated in many areas of police work, by enterprising and professionally-committed

senior officers in different jurisdictions at different times. And, most of them with remarkable success too. The problem with reform initiatives of individual police officers in the past, though, has been about their sustainability and institutionalisation, not least due to predecessor-successor syndrome. Now, the challenge is to bring more and more police officers, across different ranks, on board through motivation, persuasion, encouragement and education..

The citizenry obviously has huge stakes in good policing and is naturally to be expected to extend its support to the reform initiative, if it can see light at the end of the tunnel. Right now, of course, it is not happening due to their apathy, sometimes even antipathy, because of the twin reasons of (i) adverse police image in the society on the one hand, and (ii) acute lack of public understanding of matters police, on the other. The credibility of the police on account of historical and other reasons is pretty low in the society and the public tend to view the police and many of its actions with suspicion, oftentimes even scorn and contempt. Common citizens, therefore often tend to avoid any interface with the police even in times of need. But, that is exactly a major reason why police reforms are needed.

The citizenry indeed have a crucial role in the actualization of the needed reforms. That is because, in a democracy, the people's voice represents the strongest power. The political leadership needs people's support to win elections, and normally take up only such issues and causes that would fetch them votes. In the total absence of public pressure on the issue, the political leadership can afford to ignore the cause of police reforms, which, in any case, suits their vested interests. So, the need for the citizenry to build pressure on powers-that-be can hardly be over emphasised.

However, the question arises as to how to go about this humongous task. As things stand now, the common citizens are quite indifferent to the issue of police reform. They do feel the pinch of bad policing oftentimes, but sooner than later indifference again gets the better of them. The first and foremost requirement, therefore, is to sensitize the general public about the acute need of police reforms. Community leaders and NGOs can play a meaningful role in promoting this awareness through systematic campaigns, including those through on-line forums like Facebook, Twitter, etc. Print and visual media also needs to be effectively mobilized. A useful further step would be to educate the local legislators on the important as well as urgent need for

police reforms, and if necessary to pressurize them. What is needed is multi-pronged action on the part of citizenry in concert with reform-minded police officers. .

Conclusion

Good policing is an absolute must for upholding the supremacy of the Rule of Law in any society. And, Rule of Law is the bedrock of a healthy democratic society. There lies the significance of efficient policing for a robust democracy like India. The Commonwealth Human Rights Initiative (CHRI), an NGO, which has been indefatigably working for the cause of police reforms, has adopted the ‘motto’ : *“Police Reforms - Too Important to Neglect, Too Urgent to Delay.”* How so very appropriate!

Notes

- ¹ Writ Petition (Civil) No. 310/1996.

Thoughts on Police Reforms

Vappala Balachandran*

Introduction:

MIT professor Gary T. Marx's aphorism on police appears to be relevant after the nationwide protests in the wake of dramatic countrywide arrests of human rights lawyers, academics and civil rights activists by Pune Police on August 28, 2018. They were charged for conspiring to overthrow the government as "Maoist" activists. For the first time in our history, the Supreme Court intervened to nullify the sting of countrywide police action by forcing the return of the detainees to their homes, until they examined the evidence justifying arrests. Several retired Supreme Court judges, jurists and journalists slammed the police action as undermining the basics of democracy. Some said that it was meant to divert public attention from the recent arrests of Hindu extremists who had killed "rationalists" like Dr. Narendra Dabholkar, Govind Pansare, M.M.Kalburgi and Gauri Lankesh.

Gary Marx had written in *The Encyclopedia of Democracy* (1995): "Police are a central element of a democratic society. Indeed one element in defining such a society is a police force that 1) is subject to the rule of law, rather than the wishes of a powerful leader or party 2) can intervene in the life of citizens only under limited and carefully controlled circumstances and 3) is publicly accountable. A defining characteristic of the police is their mandate to legally use force and to

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deprive citizens of their liberty. This power is bound to generate opposition from those who are subject to it. It also offers great temptations for abuse. Law enforcement requires a delicate balancing act. The conflicts between liberty and order receive their purest expression in considerations of democratic policing.

It is ironic that police are both a major support and a major threat to a democratic society. When police operate under the rule of law they may protect democracy by their example of respect for the law and by suppressing crime.”¹

The Genesis of Police Reforms – Supreme Court Directives

In 1996 two senior retired police officers moved the Supreme Court (Prakash Singh case) to give directions to the States to give professional autonomy to the State police by taking it out of politicians’ control. In 2006 the Supreme Court issued 7 directives to the States and Centre which had to be followed by 2007.

The “Seven Directives” were (1) establishment of State Security Commission to manage the police and evaluate its performance (2) ensure that the head of police (DGP) is selected on merit with a tenure of minimum 2 years (3) ensure that other operational police officers are also given a tenure of minimum 2 years (4) separate investigation from law & order functions (5) set up a police establishment board to decide promotions and transfers of junior police officers (6) set up a Police Complaints Authority to enquire into serious complaints against officers above the rank of Deputy Superintendent of Police and (7) set up a National Security Commission at the centre for selecting top Central police officers.

Delaying Tactics by Some States

In 2008 the Supreme Court set up a three member monitoring committee under Justice K.T.Thomas to report States’ progress towards reforms after observing tardy compliance. The Committee submitted its final report in August 2010 after presenting 4 interim reports. Based on their report the Supreme Court issued notices on 8 November, 2010 to four errant states (Maharashtra, Uttar Pradesh, West Bengal and Karnataka), asking the Chief Secretaries to appear and state why the directives were not implemented. An update prepared by a private website in 2014 said that except for Kerala State no other States have done meaningful reforms except “pro-forma” compliance.²

Ten years later (July 3, 2018), the Supreme Court issued some more directions to the States and Union Territories on the appointment of the police chiefs (DGPs) in the states.³ They were hearing a clutch of pleas including the Centre's petition seeking modification of the 2006 judgment, private pleas on the lax implementation of the 2006 directives and failure to codify the Model Police Bill prepared by former Attorney General Soli Sorabjee in 2006. During the hearing, Attorney General K.K. Venugopal submitted that out of 24 States, only five — Tamil Nadu, Andhra Pradesh, Karnataka, Telangana and Rajasthan — had implemented the 2006 directions. He said that some State governments even went to the extent of appointing their favourites as DGP just before their superannuation so that they could continue in service even after retirement date.

Observing that many States had evaded the earlier directions on appointing the DGPs, the Court put a complete ban on appointing “acting DGPs.” Instead it asked the States to send a panel of names of eligible senior police officers to the Union Public Service Commission (UPSC) for their recommendations. The UPSC would prepare a list of 3 most suitable officers and the States would be free to appoint one of them. The State would also ensure that the person so selected had “Reasonable period of service” left. The Court however did not pass any orders on the model police bill or take up the contempt proceedings against some errant States.

Although the Court stayed (Kept in abeyance) any rule or law made by States on the appointment of senior police officers, the States were given liberty to move the apex court for seeking modification of its order if their laws permitted otherwise. It is learnt that 17 States had passed new Acts while 12 had issued executive orders, without following the 2006 Supreme Court order in letter and spirit. It is learnt that these States took advantage of a provision in the judgment that its orders would be operative “till such time a new Model Police Act is prepared by the Central government and/or the State government pass the requisite legislation.”

Reasons Why the States are Reluctant to Implement Police Reforms:

It is commonly understood that State politicians are objecting to implement police reforms only on a fear that they would lose power over the police. On the other hand it has become a cliché that everything

will be hunky dory if we free the police from politicians. This writer believes that it is a simplistic assessment. The issues are far too complex.

First, logistical problems unleashed by the directives were considerable. A few years ago 751 police personnel posted in various districts who were transferred appealed to the Allahabad High Court in Uttar Pradesh challenging their transfer, as their moves were not approved by the Police Establishment Board. The State government stated that getting approval for each transfer from the Establishment Board was not possible “looking at the strength of the police personnel in the State.” Allowing the petition, the Court in October 2010 set aside the transfers of hundreds of police personnel across the State on the ground that they were illegal as “they were not in consonance with the judgment of the Supreme Court.”

Second, some States especially Uttar Pradesh, submitted that the police were already subject to scrutiny by a number of institutions like the National Human Rights Commission, State Human Rights Commission, SC/ST Commission, Women’s Commission and Minorities Commission and hence one more body in the form of Police Complaints Authority was not needed. The civil society, however, felt all these bodies did not have binding powers for solely focusing on police misconduct, as envisaged in the Supreme Court directive. This matter is pending for further decision of the Supreme Court.

Third, under Schedule 7 of the Constitution the State governments were responsible for police and public order and, hence, their discretion how to discharge their constitutional obligations should not be thwarted.

Does the Police Working Become Publicly Acceptable if Politicians Stop Interfering?

The main reason why police reforms were initiated in India was political interference. All efforts have been to keep the politicians away from interfering into police working. Does that ensure that the police would work according to law and be acceptable to the public? Here one needs to quote the findings of the “Kerala Police Performance and Accountability Commission.”

Kerala Chief Minister, A.K. Antony (2001-2004), refused to interfere into police working during 2002-2003, a period known as “Autonomy.” Antony told the press on April 17 that he would not intervene in the transfers and postings of lower level police officials which would be left to the police department. He said: “There might have been Chief

Ministers who would have intervened in postings at lower levels. I am not one of them.” The government had given freedom to the department in effecting transfers, as the matter fell within its purview. That freedom was necessary for maintaining discipline, he said.⁴

This was in line with the spirit of the Supreme Court directives in Prakash Singh’s case. However did this freedom result in better police performance and public acceptability? In 2003 the Kerala government appointed a 3-member “Kerala Police Performance and Accountability Commission”(KPPAC) under the Chairmanship of Justice (retired) K.T.Thomas to evaluate the general performance of police during the “autonomy” (2002 and 2003).⁵ In fact this was the first attempt anywhere in India to evaluate the effects of political non-interference over the police. Unfortunately the results were not encouraging.

According to the Commission, there was “initial euphoria in response to the change of police policy made by the Government during 2002 and 2003... but the tempo waned gradually and what remained thereafter was the impression that there was only a marginal improvement of the police performance during the relevant period. This improvement was not uniform but lopsided.” “The evaluation made by the Commission leads to the conclusion that while some improvement in the overall police performance during 2002 and 2003 was noticed, there was a disturbing tendency towards deterioration subsequently..... The autonomy had rendered most of the police officers at the high echelons with a spirit of greater responsibility of commitment while it gave a feeling to a good number of policemen at the lower echelons a relief from discharging their duties including shirking of their responsibilities.”

The Commission noted the following adverse public reaction: “However the autonomy given to the police had demerits also. Earlier a common man who feared to approach the police either for petitioning or in compliance with the direction of police could get the help of a political power-broker and therefore had a conduit to reach the police without fear of ill treatment or intimidation from the police. The new policy had dried up this source of assistance or support. Another is that some of the policemen felt that the new autonomy is a licence to misuse the vast police powers. Its consequence was that at least some of such policemen exploited it to further their own ends.”

According to the Commission, “autonomy to the police is the ideal, but it should be tempered with measures to prevent its misuse. Although autonomy was granted, it did not make any discernable impact

on the functioning of police force at the lower level... The police is not in fact an 'autonomous' body nor are they so under any law."

Evolution of British and American Systems

Local security considerations decided the shape and nature of policing in UK and USA and also in India. While the British "Bobby" system was established as an organized police force in 1829, its echo was found in Boston (USA), which created the country's first police system in 1838. In UK, the County Police system was introduced by passing the County Police Act of 1839. New York Police Department was set up in 1845, followed by Chicago in 1851, Philadelphia in 1855 and Baltimore in 1857.

The Southern American States had developed their own police since 1704, on a different trajectory as "Slave Patrols" for keeping the slaves in check. That was their priority. However it was the need to quell urban disorder for maintaining business environment that forced America to adopt a professional policing system as in UK. During 1796-1821 England was rocked by severe law and order problems which necessitated calling in the military frequently. Basically it was commercial interest of the elite business class rather than social justice that drove both countries to adopt a better police system in which the cost of policing was borne by the county or State rather than by businessmen, which was the case earlier.

However the British "Bobby" system, while caring for business environment also catered to social justice. Home Secretary, Sir Robert Peel felt that the policemen would be respected by the society only if he came from their own "class." Till then the British policemen were mostly poorly paid Parish watchmen called "Pauper Policemen." They were looked down upon by the public due to their bad habits and corruption. Peel also codified that their recruitment will be common and senior uniformed ranks should be filled in from below and not brought in from higher social classes. This was a revolutionary step at that time. Also the 1829 Metropolitan Police Act clearly laid down that the authority of the British constable derived from three official sources: *the crown, the law, and the consent and co-operation of the people.* Peel called this as "*Policing by Consent.*"

US Police however developed along a totally different direction. Under political and business influence they started considering factory workers as "dangerous classes." At the same time profiteering, long

working hours, low pay and dangerous working conditions exacerbated social tensions in the nineteenth century. The “municipal police” system which was developed in USA started acting against the “crime producing qualities” of these workers and hence became unpopular. The policemen were also very corrupt.

Dr. Gary Potter, a well known American criminology writer, says that between 1880 and 1900 New York City experienced 5,090 strikes by 10 lakh workers while Chicago had 1737 strikes involving 5 lakhs labourers.⁶ The workers’ rallies were usually broken up by use of brute force. The police were pressurized by the business classes and politicians to carry arms to intimidate workers. Alarm boxes and horse patrols were started as deterrent steps to frighten the workers. Militarization of police started due to these reasons. Pennsylvania state police was modelled after the militarized Philippine Constabulary, which was set up by America when Philippines were a colony after the 1898 Spanish American War. Dr. Potter says: “This ‘all-white, all-native’ paramilitary force was created specifically to break strikes in the coal fields of Pennsylvania and to control local towns composed predominantly of Catholic, Irish, German and Eastern European immigrants. They (police) were housed in barracks outside the towns so that they would not mingle with or develop friendships with local residents.”

Evolution of Indian Police

In India the British introduced the “Irish Constabulary” model. That pattern was set up in Sindh in 1843 after Sir Charles Napier, then commander-in-chief annexed that area within British India. In 1853 Sir Georgia Clerk, Governor of Bombay copied that system in Bombay after visiting Sindh. Since then this pattern was adopted all over India.

The Royal Irish Constabulary (RIC) was based on the “Peace Preservation Act” of 1814 for which Sir Robert Peel was largely responsible as Chief Secretary for Ireland. However, Peel did not replicate the totally civilian nature of the London Metropolitan police (MET) in Ireland which he had later set up in 1829 as Home Secretary. RIC had a military ethos with barracks, carbines and uniforms resembling the British military. It also had clear distinction between officers and men, which Peel avoided in England. The only civil feature was the ranks where military designations were avoided. They were called “inspectors” and “Constables” but like in India the badges of rank resembled the army.

The main reason why the Indian police are unpopular among the public is because of the Irish Constabulary hang over even in twenty-first century. We have not been able to get rid of the “Irish Constabulary” ethos of our police in which too much of emphasis on parades, military type insignia on uniforms and even on cars is shown. Many feel that the reason why the general public still feels intimidated in approaching our police is because of this artificial distance still maintained which would have been justified during Colonial era.

Supervision Over Police by Elected Representatives Vital in a Democracy

In 2010 the British Conservative government adopted wholesale police reforms of bringing in more public accountability from 43 territorial police units in England and Wales. Audit by Her Majesty’s Inspectorate of Constabulary (HMIC) had found that only 11 per cent of local police were available for the public. The rest were engaged in meeting nationally prescribed targets like terrorism, cyber crime, economic crimes, or peripheral issues like family protection and domestic violence. The new plan, started from 2012 created elected Police & Crime Commissioners (PCCs) for 4 year term in all the “Police Areas” and in London Metropolitan city. The responsibility of the Police & Crime Commissioner is to ensure an efficient and effective police force within their area, to give sufficient operational freedom to the Chief Constable, while at the same time, holding him accountable for the delivery of the police and crime plan.

This ambitious reforms plan had met with stiff resistance from the labour and Liberal Democrat parties who boycotted the 2012 polls to elect Police & Crime Commissioners. But they participated in the 2016 elections. A paper prepared by the Police Foundation, the UK’s policing think tank in 2016 listed out the problems and achievements. An initial fear of politicization of the police and consequent weakening of the operational freedom of the Chief Constable was found incorrect. On the other hand the PCC system had “Unquestionably provided a more visible and accessible form of police accountability.”⁷

Some States Make the Police Chief Powerless Leading to Growing Indiscipline

Some States like Maharashtra have misinterpreted civilian control as civilian *bureaucratic* control and diluted the functional independence

of the police chief. In the beginning the Inspector General of Police (IGP) was the head of the State police but gradually the State bureaucracy usurped this power. In 1987 Maharashtra Home Department amended S.4 of the Bombay Police Act to confer police “control, direction and supervision” functions on the Home Secretary. The DGP was made a figure head. But the Home Department mandarins were conspicuously absent in discharging any of these functions during serious crises like Mumbai 26/11 terror attacks. It was power without accountability. The Maharashtra Home Department circular dated April 23, 2010 on police transfer policy insisted on prior consultation with Additional Chief Secretary (Home) before transferring of hundreds of Police Inspectors, usually in charge of Police Stations.

In most other States too this trend of concentrating power on politicians assisted by pliant bureaucrats is seen. The local public has no say in policing. Everything is decided by politicians or faceless and unapproachable bureaucrats in far away State capitals. Public relations only became a slogan. In any uniformed service discipline to perform military or police duties will not exist if the Chief is denied supervisory powers, including transfers. An average policeman would not pay heed to his uniformed hierarchy but would only obey his political or bureaucratic masters who have the power to transfer him.

Presently State Police is too Overburdened with non-Police Work to Care for the Public

British colonists and princely States had imposed several responsibilities on the Indian police, which had no relationship with their basic responsibilities of prevention and detection of crime and maintenance of order. The British did not replicate their homeland police philosophy in India. When Robert Peel established the London Metropolitan Police in 1829 the charter focused on primary police functions of prevention and investigation of crime as well as maintenance of law and order. *Public approval of police performance was also an important factor.* It was not so in India. This was understandable in colonial India since the rulers had no public accountability. Also, they did not have any other civil coercive force. Twenty-two extra responsibilities were thus imposed on the police under the 1861 Police Act including cattle impounding, killing of stray dogs and detection of street dirtying.

After Independence, Indian States retained the colonial practice, making the police their “hatchet men.” It suited the politicians to keep

police under their control. In Maharashtra State, policemen were appointed as “telephone orderlies” in addition to police guards. Simultaneously all States started prescribing ad hoc police priorities based on local political expediency. In Tamil Nadu, priority attention was paid on video piracy since successive rulers came from the film community. Mumbai city police started giving overwhelming priority on checking “Ladies Bars’ ignoring night patrolling, detection of crime and other regular police duties because of a fastidious Home Minister. In February 2010 almost one third of the Mumbai city police was deployed for several days to ensure that theatres were open for a film release of a politically connected film star. IPL matches run by political leaders also involved huge deployment of police forces.

Police burden was further increased by several State Police Acts and hundreds of “minor Acts.” For example 14 additional responsibilities including municipal functions were imposed by the Bombay Police Act 1951, including tackling infectious diseases and offensive odours. As our democracy widened its activities into social reform, social protection, healthcare and business protection legislation, hundreds of new laws were passed to penalize certain activities which were detrimental to social equality, health or clean business practices like the Untouchability (Offences) Act 1955, Dowry Prohibition Act 1961, Prevention of Food Adulteration Act 1954 or Copyrights Act 1957.

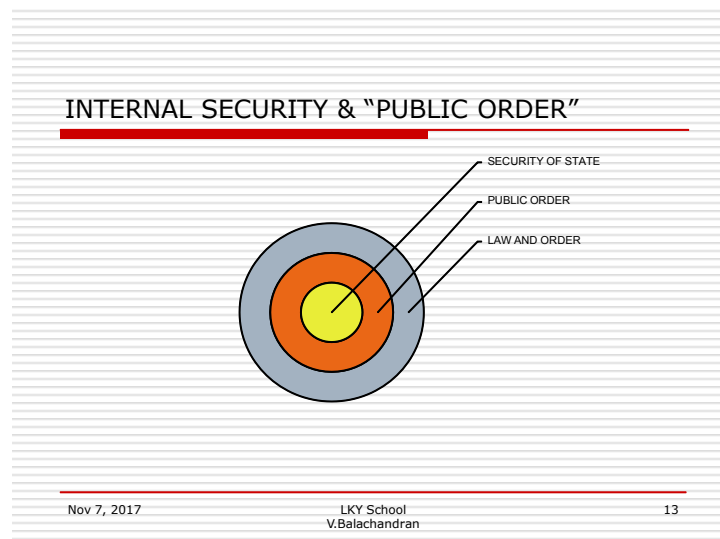
Unlike in other countries, no special enforcement machinery was set up to prosecute those who violated these “Minor Acts.” All these were entrusted to the State police for enforcement on the ground that all investigations should be done by them. The State leadership did not mind since they could become more powerful. Things reached such a stage that the police, under pressure from aggressive visual media, social reformist or business lobbies started considering these as priority items of their work rather than basic crime investigation. The police burden became unbearable when terrorism made its regular appearance. Politicization affected police ability to act according to law in dealing with all situations. With all these extra responsibilities, the police found it difficult even to do their basic duties of crime control.

Since States did not have manpower to ensure public security they gave protection only to a chosen few like politicians, film stars, businessmen and bureaucrats. Private premises like hotels and malls were ordered to be protected by police. This became a government policy. As early as 2008 it was reported that Mumbai Police had to deploy 12,083 men for security duties out of a strength of 41,914.⁸

Meanwhile all-India crime increased from 1953 to 2011 by 286.3 per cent (6+ lakhs to 23+ lakhs).⁹

What is Public Order? Is it the Same as Law and Order?

In 1966 a Supreme Court bench led by Chief Justice M.Hidayatullah delivered a landmark judgment in Dr. Ram Manohar Lohia Vs. State of Bihar amplifying what was meant as “Public Order”: “One has to imagine three concentric circles, the largest representing ‘law and order,’ the next representing ‘public order’ and the smallest representing ‘security of State.’ An Act may affect ‘law and order’” but not ‘public order,’ just as an act may affect ‘public order’ but not ‘security of the State’.” Justice A.K. Sarkar of the same bench amplified this concept: “What was meant by maintenance of public order was the prevention of disorder of a grave nature, a disorder which the authorities thought was necessary to prevent in view of the emergent situation created by external aggression; whereas, the expression “maintenance of law and order” may mean prevention of disorder of comparatively lesser gravity and of local significance only.”¹⁰



By this interpretation, the States should have been empowered in our constitution only with “Law and Order” and not “public order” or “security of State.” For ensuring “public order” and “Security of State” we should have created a Central Police. But we did not understand this nuance. In India the overburdened State police are asked to investigate all the 3 circles.

Reasons Why Other Countries are Able to Control Crime and Law and Order with Lesser Police Strength Than India

But other countries had followed this distinction. The reason why their police strength is smaller *is because the burden of internal security and enforcement of penal laws is evenly spread*. The entire burden of this is not cast upon the State (territorial) police. It is shared by other organs including Central agencies. UK with 3 legal police systems (England-Wales, Scotland and N. Ireland) has 43 units of territorial police (like our 29 State Police) , 7 national Police forces like Serious Organized Crime Agency (SOCA), Scottish Crime & Drug Enforcement Agency (SCDEA), Transport Police for the entire railway network, Parks & Open Space Police, Serious Fraud Office, Gambling Commission and UK Border Agency. All these units have police powers of varying degrees.

Policing in USA also developed from 1838 tailored to the needs of the local communities. In USA there might be about 40,000 separate police forces, half of which are just one or two Sheriffs. Bigger legally empowered police forces are in all about 17,500 but there are 16 federal agencies also to deal with internal security. A large number of State Agencies like Universities, municipalities, State hospitals, Waterways, Forests, Parks, and Correction Departments were conferred with police powers in discharging their responsibilities in addition to the Sheriffs and County Police. They have 16 federal agencies with police powers. Their Postal Inspection Service with investigating powers dates back to 1772. They conduct investigation into postal frauds and even into sending anthrax, which if suspected to terrorism originated, is taken over by FBI as in the 2001 case which killed 5 persons. The US Park Police was established in 1781. It was the US Park Police which detected a suspicious car with ammonium nitrate outside Pentagon near Arlington National Cemetery on June 17, 2011 and arrested the occupants.

Delhi Police Should Work Under the Chief Minister, Not Under the Central Government

It is odd that the elected representatives of Delhi's 23 million population, which is more than of Jammu & Kashmir or double of Israel or Switzerland, should have no say on their policing. This arrangement could have been justified during the Mughal or colonial times. Also in all democratic societies strict checks and balances are introduced on the police work apart from judicial scrutiny. This is not achieved with the present scheme of things in which bureaucracy in the Home Ministry has more powers over the Delhi Police than a democratically elected Chief Minister. The argument by the UPA and NDA governments that all capital city police systems are controlled by the Central governments is wrong. Washington DC Police, which is a "Municipal Police," is supervised by the Mayor and not by their federal government. Similarly London Metropolitan Police is supervised by the Mayor who is designated as their PCC. The Ottawa City Police which is a municipal police is supervised by the Mayor and Civic Council. Tokyo city which used to have the biggest police force (43,000) till a few years ago works under the Tokyo Metropolitan Safety Commission with 5 members chaired by a Minister.

Chief Ministers Sheila Dikshit and Arvind Kejriwal had appealed to the Central governments that they should be given control of the mammoth police force in Delhi as governance, law and order and justice delivery system in the Capital city are vital roles of public administration. In fact Sheila Dikshit had openly admitted that the unpopularity of the Delhi police and public complaints against them for not protecting women were responsible for the poor image of her government. ¹¹

A Via Media is Essential for Better Police Performance

The findings of the "Kerala Police Performance and Accountability Commission" (KPPAC) should make us consider seriously whether it is at all desirable to keep elected representatives totally away from being an inter face between the public and the police considering that even after 71 years of independence, the common man is still hesitant to go to the nearest police station for help. The late Justice V.R.Krishna Iyer had said that the widespread public grievance against the police was because the public were unable "to follow the progress of reported

crime and victims' complaints to the police." He felt that the police felt no obligation to provide information to a complainant about how the investigation of his/her case was proceeding. Justice Iyer had recommended that "it should be made mandatory in law for the police to inform the complainant about the progress of the investigation."¹² Hence, the best solution to this problem would be conferring professional autonomy and adequate powers including transfer powers to the police chief but at the same time setting up institutions to hold him and his policemen accountable to the public.

Ultimately the test of any police system is how far the public would feel confident in approaching them for redressal of grievances rather than merely watching police parades on Republic or Independence Days. The London "Bobby" system which is considered as a role model had arisen only out of popular revulsion at the constant presence of uniformed troops in civil areas during 1796-1821. Thus public confidence and their approval are the best objectives of any police reforms and not mere tenures of DGPs or allied matters.

Notes

1. Police and Democracy <http://web.mit.edu/gtmarx/www/poldem.html>
2. <http://www.lexpress.in/2014/04/police-reforms.html>
3. <https://timesofindia.indiatimes.com/india/supreme-court-issues-slew-of-directions-on-police-reforms-in-country/articleshow/64839376.cms>
4. The Hindu April 18, 2002
5. http://www.humanrightsinitiative.org/publications/police/report_on_police_accountability_commission_kerala.pdf
6. <https://plsonline.eku.edu/insidelook/history-policing-united-states-part-1>
7. http://www.police-foundation.org.uk/uploads/catalogerfiles/embracing-pccs-lessons-from-the-past-directions-for-the-future/embracing_pccs.pdf
8. During my visit to Singapore in April 2009 on the invitation of their Home Secretary to address their senior police officers on urban security, they told me very clearly that they provided no police protection to hotels or private commercial premises. This had to be managed by their security while police only ensured general law & order.
9. (ncrb.gov.in).
10. Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740
11. <https://www.indiatoday.in/india/north/story/sheila-dikshit-admits-delhi-unsafe-for-women-blames-cops-153396-2013-02-06>
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Not a Police for a Democratic India

N. K. Singh*

A Dichotomy

India has been a democracy for sixty-eight years now. Democracy does not mean merely adult franchise, i.e. right, to vote, to elect their representatives. It means all that, but also Right to equality, Equality before law, Protection of life and personal liberty and Rule of law. For this, a healthy criminal justice system is imperative: which means, an independent judiciary, and an efficient and people-friendly police, which in words of Lord Denning, is 'accountable to law and law alone.' Even after 71 years of independence, we can not claim to have such a police in the country.

Not that things have not changed. The Indian police, undoubtedly, over the years, has made significant strides in different spheres of its work and work culture. Its responses are far better now. The level of police training in the country is not the same what it used to be, say, two decades ago. In crime detection and investigation works, its methods and approach are much more scientific and modern, and we can claim to have caught-up with the advanced countries of the world. The police today are far better equipped, communication networks and transport systems, are far more sophisticated. All over India, crime and criminal records, crime intelligence data and fingerprints are computerized; the border policing is much better organized, structured and streamlined. Our Intelligence agencies have developed advance and reliable systems and operate through state of art equipments. Organizations like Intelligence Bureau, R&AW, the Central Bureau of Investigation, Border

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Security Force, Central Reserve Police Force, other para-military organizations and training institutions, like, National Police Academy at Hyderabad are perhaps equal to best in the world. Police Officers from all over Asia, Africa, and even some western countries come here for basic, advanced and specialized training and for consultations and co-ordinations in worldwide fight against terrorism, narcotic and drug related crimes and abuses.

In the meantime, let it be admitted, that the attitude of the people towards the police and their perception have also undergone a change. Be it terrorist attack, including dastardly one on Parliament House, Pakistan-born and assiduously trained Laskare-Toiba attack on Mumbai from sea routes on 26.11.2008, the role of police came in for highest appreciation. During 26\11 operations, some of the finest policemen, including, Chief of Anti- Terrorism Squad, Hemant Karkare, an Additional Commissioner of Police and others lost their lives. The entire nation paid homage to them and about a lakh of people turned up for the funeral of late Karkare.

Nonetheless, the police in India even today, cannot be said to be in the best of health. They have not been able to win the confidence of the overwhelming number of people..The image still continues to be one of a brutal, inefficient, insensitive and partisan police. One very important reason is, total control of political masters over the police. It is still functioning under the Police Act of 1861, framed by the Britishers in the wake of 1857, the first war of independence, which they called sepoy-mutiny. The act was designed to sub serve the agenda of the government of the day. The act gives the government the power of 'superintendence' over the police which the colonial rulers used to shift police loyalty from the rule of law to rulers themselves. The democratic governments of free India have not lagged behind in this regard, and criminalization of politics, of which Vohra Committee Report talked of, has made things worse. Other contributory reasons, are

- 1) Corruption in police which hurts the ordinary people at the cutting-edge level,
 - i) Lack of change in their attitude and behaviour; the tendency of lording over
 - ii) But most importantly, no worthwhile police reforms.

The problem gets compounded because, for good reasons of their own, the 'Police' and 'Public order' are state subjects, while police problems are increasingly acquiring inter-state and trans-national

ramifications, be it organized crimes, terrorist or naxalite crimes. And the States, have been very zealous of their hegemony over the police.

The Britishers used the Indian Police but never trusted it. They left behind a pattern of policing quite different from what they had for themselves in the UK. The Police in the UK is trusted by the people and the latter extend full support to them in their work. While analyzing the 'Genesis of the Hindu-Muslim problem, fanned by the diligent pursuit of divide and rule policy of the British,' Mohmood bin Muhammad, on July 5, 2009 wrote in Hindu, contrary to the general assumption that the British 'gifted' to India a sound administrative system, the following remarks of Mr. B. Pollard, Superintendent, Leicestershire Constabulary (U.K.) at a National Seminar in the S.V.P. National Police Academy, Hyderabad are quite illuminating:

"The problems of Indian Police have risen because the British introduced a police system in India which was quite opposite to their own system in the U. K. This was a deliberate change because in India the objective was to maintain the British Raj while in the U.K. they wanted a democratic police answerable to Law and Law alone. The British Police are accountable to criminal and civil courts and are not subject to any political control whatsoever." (S.V.P.N.P.A Magazine, April 1978). Mr. Muhammad adds, "There can be no better example of hypocrisy and double-facedness than this."

The Bureau of Police Research and Development, (BPR&D), which this writer had the privilege of heading, in a research paper, 'Political and Administrative manipulation of the police' in 1979, had warned that "excessive control of the political executive and its principal advisers on the police has the inherent danger of making it a tool for subverting the process of law, promoting the growth of authoritarianism and shaking the very foundations of democracy." Needless to say, the warning went totally unheeded with disastrous consequences for rule of law and protection of fundamental rights for the citizens followed. In emergency, the police was grossly misused. In a paper "The Police and Political Order in India," presented at the 10th annual conference on south Asia, Madison, Wisconsin, in November, 1981, David H. Bayley, of Graduate school of International Studies, University of Denver, wrote: "The past decade has been a time of unprecedented stress for the Indian Police. Briefly, they have been deeply involved in partisan politics. They are preoccupied with it, have been penetrated by it, and have organized collectively to participate in it. Their politicization, in

my judgment, produced a palpable decline in the rule of law.’ He further added, ‘politics has been gradually creeping into police decision-making for a long time. Police officers themselves not blameless. Recognizing that appointments, promotions, and especially, postings often depend on political influence, officers, safeguarded themselves by making political allies’ Earlier, the Shah Commission (1979), constituted by the Janata Party government of Morarji Desai, to look into excesses of emergency, had, in its report, warned that, “the government must seriously consider the feasibility and desirability of insulating the police from the politics of the country and employing it scrupulously on duties for which alone it is by law intended,”

Problem Compounded

Besides Emergency, the following are some other instances,:

- (i) the anti-Sikh riots of 1984,
- (ii) excesses on Uttarakhand agitators in October, 1994,
- (iii) Post-Godhara communal riots in Gujarat, in 2002, and
- (iv) The recent events,

Lynchings, police acting indiscriminately as ‘anti-Romeo squads,’ spate of complaints of police acting in partisan manner and the encounters, to eliminate “the state from crime and criminals,” have made matters worse. On the basis of survey conducted at the ground level, a leading newspaper reported that between March 2017 and until August 4 of 2018, there have been 63 encounter deaths, across 24 districts of U.P. to ‘clean up the state of crime and criminals.’ In number of cases similar FIRs and same key words were found. The Supreme Court was compelled to issue notice to the State government, in this regard.

The present system suites everybody except the general public. It suites the political class, sections of bureaucracy, and of course, the lawless elements. Large sections of them have developed vested interest in continuation of the present system and that explains the resistance to police reforms, which would make the police accountable to law and the people

Two Landmrk Events

Two landmark events, set in motion and accelerated the Police reform process in this country. (i) The report of the National Police Commission,

1977-81, and (ii) The Supreme Court Judgment in Vinnet Narain case in, December, 18, 1997.

National Police Commission Report, 1979-81

The rampant misuse of the police during the Emergency shook the political class, which was at the receiving end of the excesses. One of the first things that the Janata Party government of Morarji Desai did was to constitute a National Police Commission, in 1977, with former cabinet Secretary and Governor of W.B., Dharma Vira, ICS, (retd.) as its head. It included, N.K. Reddy, a retired judge of Madras High Court, M.S. Gore, professor, Tata Institute of Social Sciences, and eminent police officers, K.F. Rustamji, N.S. Saxena, and had as its member-secretary, C.V. Narsimhan, former Director, CBI. It was asked, inter alia, "to redefine the role, duties, powers and responsibilities of police with special reference to prevention and control of crime and maintenance of public order and suggest appropriate changes in the system and basic law governing the system." The Commission submitted its report in eight volumes between 1979 to 1981.

The Commission made recommendations for thorough reform, aimed at making the police suitable for a democratic system by insulating it from political interference and making accountable to law and the people.

Janata Party government did not have long life and was replaced by Mrs. Gandhi's government in early 1980. The report of the Commission, which carried the stigma of 'Janata,' was put on the shelf to gather dust.

Supreme Court Judgment of December 18, 1997

Then came another event, when the Supreme Court in 1997 took in its hand the problem of political interference in the work of investigating agencies, like the CBI and DRI at the Centre in, what came to be known as Vineet Narain case. Before the bench, comprising Chief Justice J.S. Varma, and Judges, S.P. Bharucha and S.C. Sen, were writ petitions (criminal) nos. 340 -343 of 1993, under Article 32 of the Constitution, seeking intervention of the court, for ensuring proper investigation in some cases against highly-placed persons. As the hearing in the simple public litigation petition progressed, the court felt called upon to find

permanent solution to insulate the CBI and similar agencies from extraneous influences to enable the agencies “to discharge their duties in the manner required for proper implementation of the rule of law.” The court, in its order dated 18 December, 1997, passed suitable orders to achieve these objectives as it pertained to the CVC, CBI and Directorate of Enforcement. It was in pursuance of those orders that CVC Act, 2003, (adversely amended) was passed. In concluding part of orders, the Supreme Court laid down some ground rules, in broad terms, for the type of police reforms, which were called for in States. The court said:

“In view of the (problem) in the States even being more acute, as broadly discussed in the report of the National Police Commission (1979), there is urgent need for the State governments also to set up credible mechanism for selection of the Police chiefs in the States. The Central government must pursue the matter with the State governments and ensure that a similar mechanism, as indicated above, is set up in each State for selection\appointment, tenure, transfer and posting of not merely the Chief of State Police but also all police officers of the rank of Superintendent of police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralizing the police force, it has also the adverse effect of politicizing the personnel. It is, therefore essential that prompt measures are taken by the Central Government within the ambit of their constitutional powers in the federation to impress upon the State governments that such a practice is alien to the envisaged constitutional machinery. The situation described in the National Police Commission’s Report (1979) was alarming and it has become much worse now. The desperation of the Union Home Minister in his letters to the State governments, placed before us at the hearing, reveal a distressing situation which must be cured, if the rule of law is to prevail. No action within the constitutional scheme found necessary to remedy the situation is too stringent in these circumstances.”

While passing orders, the supreme court also indicated the constitutional provisions under which it was acting for enforcement of fundamental rights.. The Court said:

“There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders

of this court as provided in Article 144 of the constitution. In a catena of decisions of this Court, this power has been recognized and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislatures step in to cover the gap or the executive discharges its role...”

Subsequent Initiatives

Encouraged by the above developments, two of us, Prakash Singh, former Director General, Border Security Force, and the self, on 17.4.1996, filed a writ Petition no. 316 of 96 in the Supreme Court under Article 32 of the constitution. Senior counsels, Shanti Bhushan and his son, Prashant Bhushan readily agreed to accept the brief free and argue the case for us as a public cause. We had prayed to the Supreme Court to issue directions for implementation, inter alia, on the following core recommendations of the National Police Commission:

- (i) Creation of state security commission, to monitor and oversee the work of State police,
- (ii) Fixed term of 2 years, (instead of 4 suggested by the Police Commission) for state D.G.P., to be appointed in a transparent manner from a panel to be prepared by an independent body,
- (iii) Creation of two clear wings, one for law and order and the other for crime investigation, to start with in urban police stations, under overall charge of the S.H.O. of the Police Stations,
- (iv) For a new Police Act on the lines of the model Act drafted by the Police Commission to replace the existing Act of 1861, in order to insulate the police from stronghold of political authority and to make it accountable primarily to law of the land and the people.

The hearing finally concluded on September 11, 2006. The learned Solicitor General of India, G.E. Vahanavati, appeared for the Union of India. In course of hearing, we received powerful support from the National Human Rights Commission, and NGOs, like, Commonwealth Human Rights Initiative. During the hearing of the petition, under direction from the court, the government of India, constituted Reberio Committee, as an expert body, to update the National Police Commission recommendations, which also submitted its report. The reports submitted by the Law Commission, Malimath Committee Report on Reforms of

Criminal Justice System (2002-03), National Human Rights Commission Report on Gujrat riots of 2002, were also relied upon. In the meantime, on September 20, 2005, the government of India, constituted a committee, under former Attorney General of India, Soli Sorabji, to draft a new Police Act, on the lines of the draft of national Police Commission. Finally, a broad convergence of views emerged on specific terms of reform and the Court, was urged to issue necessary directions, as per our prayers. Thereupon, at the end, Chief Justice, Y.K. Shawabhal, on September 22, 2006, pronounced an unanimous judgment on our petition no 310 of 1996. The court prefixed it with the following:

“Having regard to (i) the gravity of the problem; (ii) the urgent need for preservation and strengthening of rule of law; (iii) pendency of even this petition for last over ten years; (iv) the fact that various commissions and committees have made recommendations on similar lines for introducing reforms in the police set up in the country; and (v) total uncertainty as to when police reforms would be introduced, we think that there cannot be any further wait, and that stage has come for issue of appropriate directions for immediate compliance so as to be operative till such time a new model Police Act is prepared by the central government and/or the State governments pass the requisite legislations. It may be further noted that the quality of Criminal Justice System in the country, to a large extent, depends upon the working of the police force. Thus, having regard to the larger public interest, it is absolutely necessary to issue the requisite directions.”

The court also clarified that it was issuing directions, as empowered under Article 32 and Article 141 of the Constitution, and asked the Central government, State governments and Union Territories for compliance, till framing of the appropriate legislations’, Broadly, the following SEVEN reforms were required to be complied with,

(1) State Security Commission: the State governments were directed to constitute such a commission in each State ‘to ensure that the state government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that State police always acts according to the laws of the land and the Constitution of the country.’ This ‘watchdog body’ was to be headed by the Chief Minister or the Home Minister and the D.G.P. of the State was to be its ex-officio Secretary. The recommendation of the Commission were to be binding on the State government.

(2) Selection and Minimum Tenure of DGP: the DGP was required to be selected by the State Government from amongst the three senior most officers* of the department empanelled by the UPSC on the basis of record and experience to head the force and shall have a minimum tenure of two years. He could be removed earlier under circumstances specified in the order in consultation of the Commission.

(3) Minimum Tenure of IGP and other Officers: Police Officers on operational duties in the field like IG, Zone, DIG, range, Dist S.P. and SHO, will also have minimum prescribed tenure of two years and could be removed in similar circumstances as earlier. This would be subject to promotion and retirement of the officer.

(4) Separation of Investigating Police: The Investigating Police was to be separated from Law and Order police, subject to full coordination between two wings, and to start with, it was to be introduced in urban/town areas of ten lakhs and more.

(5) Police Establishment Board: There was to be Police Establishment Board in each State to decide all transfers, postings, promotions and other service related matters of the officers of the rank of Deputy S.P. and below. The board was to comprise of DGP, and four other senior officers of the department and shall be authorized to make recommendations to the State government regarding transfer and posting of officers of and above the rank of S.P. and the government will be expected to give due weight to these recommendations and normally accept it. It shall also act as forum of appeal for disposing of representations from SP and above regarding their promotion, transfer, disciplinary proceedings or their being subjected to irregular or illegal orders. It will also review generally the functioning of the police in the State.

(6) Police Complaint Authority: Police complaint Authority at the State level and complaint authorities at the Districts, to be headed by a retired High Court or Supreme Court judge at the State level and Dist. Sessions judge at the district level, with three to five members, from amongst retired civil or police officers. The dist. level authority was to look into complaints of police excesses, custodial deaths etc. and other such complaints, in respect of police officers, of and below the rank of Deputy Superintendent of Police, hold enquiries and submit reports for taking suitable criminal or departmental action. Similar will be the duty of the State level authority in respect of complaints against officers of the rank of SP and above. The recommendations of these

authorities against delinquent Police Officers were to be binding on the concerned authority.

(7) National Security Commission; The Central government was to set up a National Security Commission at the Central level to prepare a panel for being placed before the appropriate Appointing Authority , for selection and placement of Chiefs of the Central Police Organisations, who should also be given a minimum tenure of two years.

On 3rd of January, 2007, some of the States and the Centre filed affidavits on the compliance of the Supreme Court orders. While some small States reported compliance, may be watered down, major ones, generally, have been ambivalent and evasive.

Concerns

Stiff resistance to Police Reforms, comes mainly from political class, out of some concerns, a few of which are totally out of tune with the concept of Rule of Law in a democracy, which we have in this country. Recently, on July 3, 2018, the Supreme Court fell heavily on States for not adhering to directions of the Court in September 22, 2006 judgment on appointment of DGPs and issued firm directions to appoint them well in time, from the panel of three name, prepared by the UPSCs. Why only States, the Centre also, often, not lagging behind when it comes to powers even in matters concerning investigation of crimes and corruption, as reflected in recent amendments to Corruption Laws. Under amendments, passed by the Parliament in its monsoon session (2018), prior approval of the government will be required even to take up investigation of corruption cases, in respect of all public servants. Also now sanction for prosecution will be required in respect of even retired officers.

There is resistance also because of mistaken notion about the powers they feel, they should have in controlling the police, even in investigation works. The Supreme Court, succinctly, clarified it in respect of CBI, which should hold good about police as well in investigation works. In Vineet Narain case, in December 1997, the court held, “there can be no quarrel with the Minister’s ultimate responsibility to the Parliament for the functioning of these agencies It is sufficient to say that Minister’s general power to review the working of the agency and to give broad policy directions regarding the functioning of the agencies and to appraise the quality of the work of the head of the agency and other

officers as the executive head is in no way to be diluted. Similarly, the Minister's power to call for information generally the case being handled by the agencies is not to be taken away. However, all the powers of the Minister are subject to the condition that none of them would extend to permit the Minister to interfere with the course of investigation and prosecution in any individual case and in that respect the concerned officers are to be governed entirely by the mandate of the law and the statutory duty cast upon them." In view of this, some of the recent amendments in Laws on Corruption, one may say, are likely to be set aside, if challenged in the court.

Reluctance, in implementation of some of the reforms passes comprehension, like separation of Investing Wing at the P.S. level. It should be possible to get over the financial constraints in this regard, if there is will for this. Similarly, any government with worthwhile commitment to good governance, should straight away agree to creation of Police Complaint Authority.

The trouble areas are State Commission, fixed tenures for officers below the rank of D.G.P, extending to even P.S. level, and Establishment Boards to advise in matters of transfers and posting of the officers. And these arise partly, out of their legitimate, concern about responsibilities under 'Public Order' and ever-growing challenges in maintenance of Law and Order. Again transfer and postings must be decentralized, and are necessary for good governance. Once right choice is made at the top, there should not be much of problem. Here question also arises whether we, the police leadership, have lived up to expectations and are up to the mark? The answer, one is afraid, may not be 'yes' in number of cases. Many, as L.K. Advani famously said about media during Emergency, tend to 'crawl', when were asked to 'bend'.

Police for New India

Madhav Godbole*

After independence, there has been perceptible improvement in the functioning of several instruments of governance but police is the solitary exception. Its working has been marked by steep deterioration. More shocking is the disdain of the police for rule of law, which is supposedly its prime responsibility. Working of police has become notorious for lack of sensitivity to human rights, particularly of weaker sections of society, minorities, women, children, and other deprived sections such as bonded labour and landless labour. Equally shocking is communal bias of the police which has created a feeling of insecurity among the minorities. Politicisation of police has reached its nadir. Every political party has used the police to increase its sphere of influence and the ruling party treats the police as its legitimate arm of exploitation.

A number of innovative measures adopted over the years have not worked in India. It was believed that police stations manned entirely by women would be able to address the grievances of women more sympathetically. But, this has not proved to be true. It was believed that women police would be less prone to corruption than men. This too has been belied. It was believed that women police would be less prone to excessive use of force. This too has turned out to be a fanciful notion. It is time these concerns are looked into by experts.

The relevant issues are wide-ranging and complex and ought to be addressed holistically. Unfortunately, as in the story of the elephant and the seven blind men, mostly only one or the other aspect of this gigantic problem has received attention. It is interesting to see that there are a number of institutions which keep a watch over the working of the

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police—the judiciary, women’s commissions, scheduled castes commission, scheduled tribes commission, human rights commissions at the State and Central levels, Parliament, state legislatures and the media. In spite of this close scrutiny, the credibility and image of police is the lowest among the public servants from one end of the country to the other. This needs to be recognised as a national calamity. CCTV cameras are no longer necessary to keep a watch over the wrong doings of police. Every smart phone in the hands of a common person is poised to record the atrocities committed by the police and their dereliction of duty. In the following discussion, I have attempted to touch upon a few constitutional, statutory and policy aspects which deserve urgent attention.

The issues pertaining to police reforms have been examined by scores of committees and commissions appointed by the Central and State governments over the years. As is the usual practice, most of these have been consigned to archives. The most prominent of these studies was the report of the National Police Commission (NPC) which was appointed by the Janata government after the dreaded emergency. But, as soon as Indira Gandhi came back to power in 1980, she issued orders to withdraw the series of reports submitted by the NPC. It was only when the United Front government came to power that the then Union Home Minister, Indrajit Gupta wrote to the States urging speedy follow-up action. But by then the political lethargy had set in and hardly any action was taken. Finally, a number of Public Interest Litigations (PILs) were filed in the High Courts and the Supreme Court. After considerable insistence by the petitioners, the Supreme Court gave directions for the restructuring of police departments in the States and the Central police organisations. Though this was a step forward, it must be stated that it did not go far enough. The court directions were largely confined to safeguarding the police against political interference. Several other major concerns regarding the functioning of the police were totally left out in the submissions made to the court and consequently in the directions issued by the court. But, the most shocking aspect is the total disdain shown by most of the States to these directions. It is equally disconcerting that the Supreme Court has not hauled up any of the States for non-compliance of its orders. For example, the peremptory replacement of Director General of police by the Governor in J&K in September 2018, was in defiance of the Supreme Court directives. According to a recent news report, the Chief Minister of

Punjab, Amrinder Singh, believes that the orders of the court are not in keeping with the federal principles and increase the jurisdiction of the Central government. He has announced that the Punjab government would be filing a review petition in the Supreme Court, though such attempts have failed in the past!

This takes us to the inevitable question of the review of Union-States relations. The Constitution of India largely followed the provisions of the Government of India Act, 1935, particularly on matters pertaining to relations between the Union and the States. The Seventh Schedule of the Constitution divides the responsibilities of the Union and the States in three lists—the Union List, the State List and the Concurrent List. The entry ‘police and public order’ figures in the State List. This has severely restricted the charter of the Union government. It is imperative that this subject is transferred to the Concurrent List. This matter had come up for detailed examination on the basis of the recommendations of the four task forces appointed by the National Democratic Alliance (NDA) government following the Kargil War. The government had accepted the cabinet committee recommendations that the matter should be pursued by discussing it in the conference of Chief Ministers and necessary proposals for amendment of the Constitution should be worked out. This was way back in 2002. We are now in 2018! Even discounting the ten years of UPA regime from 2004-14, one would have expected the NDA government under Narendra Modi to act on it energetically. Unfortunately, there has been no action on it at all. The urgency of the proposal can be seen even from the few instances given below.

First, in this continental size country with its multifarious problems of internal security, there is no provision for federal civil police. What we have are only the central para-military police. The complex challenges of internal security, including of the national and international terror outfits, drug cartels and secessionist movements like Khalistan and Naxalism require that the Central government is entrusted with the responsibility of police and public order on a concurrent basis. Second, the question of enacting a separate law for the Central Bureau of Investigation (CBI) has been under discussion for the last five decades. But the States have been objecting to it. I have dealt with this matter at some length in my recent article in *The Wire* (27 September 2018) titled ‘Why a Revamping of the CBI is Necessary.’ As I have urged therein “What is at stake is more than just the image and credibility of

the CBI. India's image as a country committed to the rule of law itself needs to be refurbished nationally and internationally. The Narendra Modi government can send a powerful message by setting the ball rolling without loss of any further time." Third, it is imperative to authorise the centre to *deploy* the central para-military forces in the States, as opposed to merely stationing them. In the recent past, this has become a major handicap for the Centre in dealing with law and order situation arising in major communal clashes such as in Ahmedabad and Godhra riots, the demolition of the Babri Masjid in December 1992 and the series of bomb blasts in Mumbai thereafter.

The political sagacity requires that these matters should be discussed in the larger national interest, keeping aside the rhetoric of federalism. It needs to be understood that, strictly speaking, India is not a federation. Article 1 of the Constitution clearly states that "India shall be a union of states," though it has consciously adopted a number of federal features. But, these cannot be permitted to undermine its basic tenet, namely, that it is a Union of States. Therefore to argue that Indian federalism will be adversely affected by sharing the responsibilities of 'police and public order' between the union and the states is a gross misrepresentation. My next book, *India's Quasi-Federalism—Faultlines, Challenges and Opportunities*, on which I am currently working, will deal with these issues extensively.

The inter-state council established by V.P. Singh government in 1990, which has largely remained grossly under-utilised and neglected, could be a useful forum for arriving at an amicable solution to these politically complex problems such as the transfer of the subjects 'police and public order' to the concurrent list and restructuring of the CBI by creating mutual trust between the Centre and the States. In the Indian context, confidence-building measures (CBMs) are more important between the Union government and the States, than between India and Pakistan!

The question of infringement of human rights by police has become highly important over the years. The most repulsive of these are the custodial deaths. The utter disregard shown to the sensitivities on this subject by police in all States is shocking. The excessive use of force by the police in interrogation of accused and in crowd control, which is caught on smart phones of people, apart from the media, and shown in the 24x7 news on television has created a widespread revulsion for the police. The so-called encounter killings have sullied the image of

police. Abhinav Kumar, Inspector General, Border Security Force, in his thoughtful article ‘Crime and Complicity’ (*The Indian Express*, 4 October 2018, p. 8) has written about the ‘encounter culture’ in Uttar Pradesh and has underlined that the ‘encounter culture did not come out of nowhere.’ But, this is not a new phenomenon. Years ago, Bombay (now Mumbai) police took pride in its achievements in this regard. An inspector of police who was reported to have killed over a hundred criminals in ‘encounters’ became a hero in real life and was later glorified in a Hindi film, which set up a very wrong example before not only the people but also the police. This is anti-thesis of the very concept of rule of law. The recent instances of the police carrying an innocent woman on the top of their vehicle for interrogation, her falling off from the vehicle and making a run for home, and shooting of an executive of a company for not stopping his car when asked by motorcycle riding police, have created terror psychosis in the country. Is this how the police are expected to behave in a civilised society? Whom are the police answerable for such atrocious conduct? The question of giving autonomy to the police will have to be discussed against this background.

The recent case of the attempt by Pune police to arrest five “intellectuals” for their activities as urban Naxalites needs to be examined in depth, for it has serious implications for the functioning of the police. I had in my article titled, ‘Let us not stop the police from doing its job’ (*rediff.com*, 3 September 2018) criticised the Supreme Court for its unjustified interference at the early stage of investigation by invoking its powers under Article 32 of the Constitution— “remedies for enforcement of [fundamental] rights.” While the majority judgment permitting the police to continue with the investigation has received wide publicity, the minority judgment of Justice D.Y. Chandrachud, which has cast serious aspersions on the police, has not been reported as extensively. Careful reading of the two judgments bring out how even highly trained judicial minds at the highest level take diametrically opposite views, based on their perceptions. The dissenting judgment shows how far the police have gone down in the perception of the informed sections of the society. It is as if whatever police say or do can never be right. It was surprising to see that even the majority judgment further extended the house arrest of the five accused, rather than permitting the Pune police to arrest them. The minority judgment went even further and suggested setting up of a court-supervised special

investigation team. There was widespread criticism of Pune police in a section of the media and by the so-called liberals for arresting the five intellectuals. Motives were ascribed for their actions. To avoid the backlash, Pune police held a press conference to give out their side of the story. But this too was faulted by the Apex Court. How should this one-sided game be played in the future? I am constrained by limitations of time and space to comment fully on all the issues arising out of this case, but I feel that they need to be studied and debated. Both the majority and the minority judgments should be included in the syllabus of police training institutions and discussed in the basic training and refresher courses for officers at different levels. Such case studies will be much more productive in dealing with the day-to-day situations in the real world.

There is an animated debate in the country on enacting a common civil code but there has been no reaction to the very ill-considered decision of the government of India not to have an all India police act to replace the old, archaic Police Act of 1861. Even with the division of powers in the Seventh Schedule of the Constitution referred to earlier, the government of India could have taken the initiative to enact such a law as was done in the case, for example, of Urban Land Ceiling Act. Article 249 of the Constitution gives power to Parliament to legislate with respect to a matter in the State list in the national interest. Police and public order are the basic responsibilities of the government. While the States could be free to make any changes in the central law to suit the local requirements, I strongly feel that there are a number of precepts which should be considered sacrosanct and must form part of the national police act. Illustratively, these include basic structure of police at different levels, their designations, hierarchy of police structure, composition of police, fixity of tenure, representation for minorities, reservation policy, personnel policies, empowered staff selection committees, grievance redressal committees, thrust on human rights, minimum use of force by police, sensitivity in dealing with weaker sections, women and children, promoting communal harmony, upholding the secular fabric of society and maintaining the strictest standards of discipline. There can hardly be any difference of view on these basic pre-requisites for a police force to meet the requirements of a new India. Why are we shying away from enacting such an act at the national level? Sadly, what is wanting is administrative and political will.

It is reassuring to see that the new Chief Justice of India Justice Ranjan Gogoi has indicated that he would soon unveil a plan for initiating judicial reforms to redress the frustrations of the people with the judicial system we have inherited and then perpetuated over the years. I had dealt with this subject in a hundred page chapter titled 'Judicial Reforms Nowhere in Sight,' in my book, *The Judiciary and Governance in India* (2008). I would like to invite attention here to only a couple of suggestions made therein. In the recent years, the credibility of police has gone down to such an extent that there are repeated demands made that investigation of cases be carried out under the supervision of the High Court or the Supreme Court. Similar demand was made in the case of five intellectuals referred to above. Justice Chandrachud, in his dissenting judgment, has upheld this demand, though the majority judgment did not consider it necessary that the investigation should be taken over from the Pune police. In my above mentioned book, I had recommended that the inquisitorial system, which is in vogue in a number of European countries such as France and Germany, as opposed to the adversarial system prevalent in India, should be introduced on a pilot basis to have the police investigations carried out under judicial magistrate's supervision. Justice V.S. Malimath Committee, in its report on reforms of criminal justice system (2003), had noted that the inquisitorial system is certainly efficient in the sense that the investigation is supervised by the judicial magistrate which results in a high rate of conviction. The Committee on balance felt that a fair trial and, in particular, fairness to the accused, are better protected in the adversarial system. However, the Committee felt that some of the good features of the inquisitorial system can be adopted to strengthen the adversarial system and to make it more effective. This includes the duty of the Court to search for the truth, to assign a pro-active role to the judges, to give directions to the investigating officers and prosecution agencies in the matter of investigation and leading evidence with the object of seeking the truth and focusing on justice to victim. This effectively will hit the nail on its head in so far as police prosecutions are concerned. This single reform will go a long way in redressing the grievances of the people.

The other critical reform, which is necessary, pertains to the problem of perjury. In a number of recent cases of communal violence in Godhra and elsewhere, love jihad, encounter killings and rape, the enormity of the problem has repeatedly come to the fore. Perjury has been made a

criminal offence under Sections 193 to 195 of the Indian Penal Code. As is well known, perjury can contribute to the wrong person being convicted while the true criminal and the perjurer walk on the street in freedom. The Malimath Committee found that, unfortunately, the legal provisions are rarely resorted to and perjury has become a routine feature in courts. The Committee has stated that the Court's response to the serious problem of perjury is rather one of utter indifference. The Committee had recommended substantial enhancement of punishment for perjury and a summary trial of such cases. The Committee had also recommended that a law should be enacted for giving protection to the witnesses and their families on the lines of the laws in USA and other countries. Much remains to be done in this critical area.

Reference must be made to two other reforms which are imperative to smoothen the work of the police and to make it more effective. These pertain to arbitrary withdrawal of cases by State governments for political purposes, and the increasing recourse taken to the provision of anticipatory bail by the financially well-off and politically powerful persons, frustrating the efforts of the police to interrogate the accused in custody. I have been writing about it for several years but the vested interests for retaining the status-quo have prevailed. The institutional mechanism to keep a watch over the work of the police can be only as effective as the political will of the elected government in power. Unfortunately, there is lack of political and administrative will in this regard in various States and the Centre. This is evident from the fact that several commissions such as the minorities commission, human rights commission, and women's commissions are not fully operational or not effective enough in exerting pressure. In several States, the citizens' grievances commissions are non-existent. This needs to be remedied. Citizens themselves will have to exert pressure to bring this about.

Reference must also be made to yet another instrument in the hands of the citizens to keep a close watch on the police. It is the right to information enacted in 2005 to empower the citizens to seek information on the working of the police. Unfortunately, this instrument has started becoming blunt for two reasons. First is that the government has been making liberal use of the provisions to exempt the working of the police from the purview of this Act. I have dealt with this at length in my article on the CBI referred to above. The second is the

apathy of the citizens themselves. It must also be underlined that in several States the Information Commissions have been rendered ineffective due to the posts of Information Commissioners lying vacant or the posts being filled by persons on political considerations. This proves once again that mere enactment of a law is not enough. It is equally important that it is implemented vigorously to realise the underlying objectives.

I find that most often, the thrust of writings on police reforms is mainly on curtailment of political interference in the working of the police and giving autonomy to the police in their work. Both these are no doubt important but, in the Indian context, a few other aspects are as important, if not more important to increase the morale, effectiveness and commitment of the police. Foremost among these is proper provision for police housing. In most of the large cities and metropolitan areas, due to grossly inadequate government housing, the police have to live in slums, hutments and *juggi-zopadis*. Whatever housing is available in police lines, its up-keep and maintenance is in shambles for lack of funds. The long daily working hours for police are simply inhuman. In Mumbai, for example, till very recently, the police did not get even a weekly off. When, in 2017, for the first time, the then Mumbai Police Commissioner, Datta Padsalgikar, introduced the weekly holiday for the police, he deservedly became an iconic figure in the Mumbai police. And this is at the time when the State government employees and officers are demanding a five-day week! The basic requirements such as proper housing and weekly rest is certainly not too much to ask for but it does not figure in the discussion on police reforms. Are we not missing something important in the process?

The police as the up-holder of law of the land is the face of the government but in the recent years, the fear of police is nowhere to be seen. There are frequent cases of attacks on police, blackening of their faces and even beating them up. There have been shocking cases of taking liberties and misbehaving with women police. This degradation of the police is undoing of the civilizational values and culture. But, these concerns hardly ever figure in the discussion on police reforms.

Note must also be taken of the police sacrificing their lives in the fight against Naxalites and terrorists. Hundreds of police lose their lives in this manner each year. Questions are hardly ever raised about whether their families have been taken care of, their children's educational and other needs are catered for and so on. All police

personnel must be provided insurance cover against such calamities. These are matters of serious concern in the Indian context and have implications for the morale of the police. Should they not find a mention in the discussion on police reforms?

But, this is one side of the story. The other equally important aspect relates to rehabilitating and refurbishing the public image of the police. If public perception about the police is to be changed radically, and the police are to become the friendly and reassuring face of the law, some radical changes will have to be made in the recruitment, training, and mental make-up of the police. How to bring this about is a question to which there are no easy answers. Psychological tests will have to be devised to judge the mental make-up, equanimity and fairness of the incumbents from the recruitment stage and at frequent intervals thereafter in their long career. Eminent social science institutions in the country must be empanelled for devising and carrying out the tests. Collaborative assistance of well-known foreign institutions must also be sought without any hesitation.

The sharp deterioration in the working, rectitude and image of the police, coupled with the serious threats to internal security, is a daunting challenge. The question is whether India is prepared to meet this challenge. Drum-beating has already begun for the State Assembly elections due in a few States and the Lok Sabha elections in 2019. But in the noisy, acrimonious debates on the TV channels, press and the social media, police reforms hardly ever figure, though they are so vital for the survival of civilizational values and rule of law in the country. Where are we headed?

Empower the Police Complaints Authorities, Enable Accountability

Pavani Nagaraja Bhat*

Policing is a central cog of the criminal justice system of a country, and most often the first interface the public has with the justice system. A fundamental feature of a modern, democratic and transparent police service is accountability – first to the law, and at multiple levels to government, independent institutions, and to the community. The most robust accountability of the police is that which is at multiple levels – the executive, Parliament, judiciary, departmentally, external civilian oversight mechanisms and the society. True accountability guards against illegitimate political interference, and ensures that the police are community-focused and uphold legal norms and procedures in all aspects of police work.

This article focuses on the need for an independent police complaints body, which it holds up as a unique and necessary feature of democratic policing. Governments must ensure that there are sufficient and easily accessible channels where people can file complaints against police personnel for misconduct or possible criminality and receive prompt and proper inquiries into these complaints. This is a specific aspect of accountability that needs to be upheld.

India's colonial Police Act of 1861, the Central Act governing policing, does not provide such a mechanism. Later, the National Police Commission, Supreme Court of India and the Model Police Bill emphasised the need to create an external civilian oversight body focused on police accountability. Finally, in September 2006, in *Prakash Singh*

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and Ors. vs. Union of India and Ors.,¹the Supreme Court ordered all State governments and Union Territories (UTs) to set up Police Complaints Authorities (PCAs, also known as Police Accountability Commissions). These bodies are ostensibly India's first experiment in a form of external civilian oversight of the police at State and local levels.

This article aims to set standards for a model PCA, distinguished by being truly independent and responsive. It assesses India's current functioning authorities, across States and UTs against these standards. In so doing, the article also measures States and UTs' compliance with the Supreme Court directive on PCAs.

Police Use of Force and the Need to be Accountable

The police have lawful and legitimate powers to use force against individuals and groups. This is a unique feature, and requires legal provisions, procedures and institutions to guard against excess and/or abuse of this immense power by the police. In India, it is an unfortunate reality that excessive force and custodial violence by the police is common and in fact almost routine.

Data published by the National Human Rights Commission (NHRC) indicates a growing rate of complaints received alleging custodial rapes and deaths (including in judicial, police and paramilitary custody). The Commission received 1719 intimations in 2013-2014,² 1722 intimations in 2014-15³ and 1823 intimations in 2015-16.⁴ While Uttar Pradesh has consistently received the highest number of complaints alleging custodial rapes and deaths, Punjab, Madhya Pradesh and Andhra Pradesh are not far behind.

All sections of the public, particularly vulnerable groups (women, socio-economically weaker sections and minority communities), face various forms of police brutality including torture, rape, sexual abuse, extortion, illegal arrest, illegal detention, refusal to register First Information Reports (FIR) and corruption. To seek redressal for these wrongs, the victim needs to register an FIR, engage a lawyer, and involve themselves in the herculean task of litigation. This process is time-consuming, complex and expensive for most victims. Most importantly, the police itself is an indispensable part of all the processes of the criminal justice system, who the victim has to inevitably approach. Victims are disadvantaged in the balance of power between themselves

and the police's instinct to shield their own from accountability. This often means that victims of police misconduct are seldom successful in even registering a complaint against the police, much less seeing a case through to its end. This lack of accountability is a prime reason for continuing police misconduct. Effective and truly independent local level complaint bodies can play a significant role in bridging this critical gap.

What Does an Independent Police Complaints Body Look Like?

There are various models of police complaints bodies that have been set up in different countries. Much can be learnt from comparative study of these models and their impact on police accountability. The effectiveness of these bodies depends largely on their independence from police and executive influence and how autonomous and embedded their status is in the country's legal architecture.⁵

Independence, sufficient powers, adequate resources and power to follow up on recommendations are essential for a successful oversight body devoted solely to police oversight.

- A complaints body must be independent of the executive and the police, and fully accountable for its performance. In India for example, a complaints body in the UTs should report to Parliament and a State body to its State Assembly.
- It should have powers to independently investigate complaints and issue findings. This requires concomitant powers to conduct hearings, call for documents and compel the presence of witnesses including the police.
- It must be able to identify systemic problems in policing and suggest reform.
- The authority should have sufficient funds to function. It needs to have skilled human resources to investigate and adjudicate.
- It should be empowered to report its findings and recommendations to the public, and to follow up on actions taken by the police chief or the State government in response to its recommendations. It should also be able to draw the Parliament's attention to instances where the police take no action on its findings.⁶

- It should compose credible independent members from a diverse background of the society selected by an independent selection panel. The membership and the selection should not include the executive or the police.

Structure of PCAs as per the Supreme Court and the Model Police Bill

The need for an external mechanism to act as police complaints body has long been recognised in the police reform discourse in India. Released in February 1979, the first report of the National Police Commission recommended setting up the modalities for inquiry into complaints of police misconduct. The report stated that the mechanism must carry credibility, fairness, impartiality and efficient rectification of serious deficiencies against their functioning to public satisfaction. The report recommended the establishment of PCAs to reform policing in a manner that prioritises service to the public at large and upholds constitutional rights and liberty of the people. The recommendations of this report and the subsequent reports were not implemented by the States. This led to two retired senior police officers approaching the Supreme Court of India for the implementation of the recommendations in *Prakash Singh and Ors. vs. Union of India and Ors.*⁷

Meanwhile, considering the evolving roles and responsibilities of the police, in 2005, the Central government formed the Police Act Drafting Committee, also known as the Soli Sorabjee Committee tasked with drafting a Model Police Bill, in an effort to initiate drafting of a Police Law to replace the 1861 Act. A model template was produced by the Committee in October 2006 with an entire section of the Model Police Bill specific to the establishment of Police Accountability Commissions (PACs) in all States and UTs at multiple levels.

In September 2006, the Supreme Court issued seven directives in *Prakash Singh* case to bring about police reforms. The Court mandated the following:

1. set-up of State Security Commissions;
2. securing the tenure of Director-General of Police;
3. securing the tenure of Inspector General of Police and other officers;
4. separation of investigation from law and order;
5. set-up of Police Establishment Boards;

6. set-up of Police Complaints Authorities; and
7. set-up of a National Security Commission.

Apart from the directives, the Supreme Court strongly emphasised the need for the Union and all States to enact new Police Acts.⁸ Post 2006, seventeen States have passed new Police Acts including some of the measures recommended for bringing police reforms.⁹ In the remaining States,¹⁰ the respective home departments issued notifications or orders setting up these bodies.

The elements given by the Court and the Model Police Bill are largely similar, but the latter is more detailed. Both mandate the creation of PCAs at all States and UTs at multiple levels: at the State level and the district/division level based on the ranks of police personnel. The mandate of the authorities is:

- The State level authority must inquire into cases of serious misconduct including incidents involving (i) death, (ii) grievous hurt, or (iii) rape in police custody by police officers of and above the rank of Superintendent of Police.
- The district level authorities must inquire into cases of serious misconduct on incidents involving (i) death, (ii) grievous hurt, (iii) rape in custody, and; complaints of misconduct such as (i) extortion, (ii) land-house grabbing or (iii) any incident involving serious abuse of authority by police officers of the rank of Deputy Superintendent of Police and below.

Widening the Mandate of the PCAs

The mandates provided in the statutes and executive orders creating PCAs have broadened the kind of complaints that may be brought before the authorities. While this is a variation from the Courts' formulation, it is a welcome move. This ensures that a civilian oversight body looks into as many forms of police misconduct as possible. The Court mandated the PCAs to conduct inquiries into serious misconduct or misconduct without restricting the ambit of these offences. Due to this, many authorities have the jurisdiction to inquire into several forms of police misconduct.

Nineteen States¹¹ and all UTs have included these forms of misconduct (some, if not all kinds): non-registration of First Information Reports, corruption, sexual harassment, dereliction of duty, human rights violations, arrest or detention without following the due process of law.

Uttarakhand PCA may conduct inquiry on any matter which in its *opinion is fit for independent inquiry*. This gives the body the complete discretion to inquire into any and all cases it deems fit for inquiry.

Gaps in Implementing the Court's Directive on PCAs

Twelve years after the judgment of the Supreme Court, there is not a single State or Union Territory where PCAs have been set up as per the directive. States and the Ministry of Home Affairs have taken the liberty to set them up with wide deviations from the directive, or not set them up at all. These significant lapses have led to multiple litigations across the country where several High Courts have reiterated the stand of the Supreme Court. In fact, the *Prakash Singh* case is still pending at the Supreme Court to monitor the implementation of the directives. This section presents the gaps in the implementation of the sixth directive.

Not all States have even legislated or provided for PCAs on paper. On paper, 23 States have set up PCAs at the state level¹² and 15 states at the district level.¹³ In two states only district level PCAs are set-up.¹⁴ The Union Ministry of Home Affairs issued a notification that establishes PCAs for all UTs.¹⁵ To make things worse, there are even less PCAs actually operating on the ground. Complaints Authorities are functional at the State level only in 12 States¹⁶ and at district level in six States.¹⁷ They are functional in all UTs except Delhi. A single member PCA functions for both Daman & Diu and Dadra & Nagar Haveli.

Worrying Trends

- In a serious negation of the Court's directive to set up independent effective PCAs, some States have divested the functions of the PCA to an already existing redressal mechanism in the guise of "compliance." In Odisha, the Lokayukta functions as the PCA. This is also non-functional since the death of the Lokayukta in 2012, but the most recent Police Bill tabled in the State Assembly gives the function of the PCA to the Lokayukta which clearly remains the State government's intent.¹⁸
- In Delhi, the Public Grievances Commission was mandated to function as the PCA by a 2012 notification. This was

challenged by the Commonwealth Human Rights Initiative in the Delhi High Court in May 2015 for being violative of the Court's directive. The Court accepted the prayer to quash the 2012 notification and ordered the government to issue a fresh notification. The Lieutenant-Governor issued a fresh notification which was accepted by the Court in February 2018. The matter is now being litigated again at the Delhi High Court for procedural impropriety in finalising the notification.¹⁹

- Bihar is the only State where PCAs do not have the power to receive complaints from the public and inquire into them.²⁰ Bihar only sets up 'District Accountability Boards.' These Boards monitor the departmental enquiry or actions related to complaints of 'misbehaviour' below the rank of Assistant/Deputy Superintendent of Police on the basis of quarterly report received from the District Superintendent of Police.²¹ This is non-compliant with the directive in terms of the Board's mandate and powers. Effectively, it is not a PCA.

Resistance from Uttar Pradesh and Jammu & Kashmir

In an affidavit submitted to the Court in 2006, Uttar Pradesh government stated that there were sufficient mechanisms to address police misconduct.²² However, the number of cases reported from Uttar Pradesh to the NHRC is the highest among all States. In fact, the number of cases intimated to the NHRC from Uttar Pradesh alone has increased alarmingly over the years. Before the *Prakash Singh* judgment, 220, 250 and 300 cases of deaths and rapes in custody were intimated to the NHRC 2003-2004, 2004-2005 and 2005-2006. In 2014-2015 and 2015-2016, 341 and 350 cases of deaths and rapes in custody were reported. Apart from these, other kinds of police misconduct were also reported. Despite this trend, Uttar Pradesh refused to implement this directive.

Jammu & Kashmir moved an application to the Supreme Court to suspend the implementation of this directive based on the security situation in the state.²³ This resistance of the government denies its public an opportunity to approach a civilian oversight body.

Restricting the Complainants' Accessibility to the Authorities

In the current set-up of PCAs, the accessibility of the complaints body is restrictive. Firstly, most complaints bodies are functional only at the State level. On the other hand, in Madhya Pradesh and Bihar, the PCAs are mandated only at the district level wherein, the bodies are not yet functional in Bihar. Creating only single level bodies causes difficulties in two ways: their geographical accessibility to the complainants and by excessively overburdening the single body. The Court's design was to split the jurisdiction of the PCA into State and district levels based on the rank of the police personnel, to ensure that members of the public can easily file complaints against police at the appropriate levels.

PCAs Barred from Taking Complaints

Several Police Acts limit the power of the PCAs to take up complaints. According to the Court, PCAs must accept complaints and take suo moto cognisance of complaints made by the victim or someone complaining on his/her behalf. In five States, Police Acts bar the PCA from taking up complaints that are being inquired by the NHRC, State Human Rights Commission, any court, under departmental inquiry of the police, any statutory commission or the Commission of Enquiries.²⁴ In six States,²⁵ complaints may also be forwarded to the PCAs from the NHRC or the State Human Rights Commissions.

Matters that are pending adjudication in court need not be inquired into by the PCAs. However, absolutely restricting the PCA from inquiring into any complaint that is under consideration by any other oversight body is a bad practice. The statutory Commissions have their specialisations to address complaints of police misconduct with minority communities, SC/STs, women and children among others, and will have a specific approach. The matter of culpability of police personnel in terms of misconduct can be determined most effectively by a body that specifically handles issues of policing that affects and impairs the public's rights and liberties. PCAs must be equipped to handle these matters effectively and recommend action which the State department must take.

Excessive Screening of Complaints

Complaints bodies should readily take up complaints that fall under their mandate. Some States require the PCA to check the veracity of

the complaint before formally registering a complaint. The ‘prima facie satisfaction’ of the PCA is needed to proceed with the inquiry into the complaint.²⁶ This is an unnecessary requirement which is neither prescribed by the Court, nor by the Model Police Bill. Not only this, six PCAs also require the complainant to provide a sworn affidavit along with the complaint.²⁷ These requirements breed a sense of distrust between the PCA and the complainant.

Ideally, police complaints bodies should be given the discretion to scrutinise complaints only to see whether they fall into their jurisdiction as per their mandates. This is reflected in their governing and subordinate legislation. Once a complaint falls under the mandate of the body, the inquiry or investigation process must begin. Demanding an affidavit and checking the veracity of the complaint burdens the complainant, who may be a victim of police abuse in all probability. The requirements are definite ways for State governments to intimidate potential complainants from accessing the PCAs.

Imposing a fee on complainants

Unlike all other legislations, Odisha requires the complainant to pay a court fee of Rs. 50, if the complaint is against an officer of the rank of Assistant Superintendent of Police and Rs. 25 if the complaint concerns any other officer. There is no justification for imposing this fee on the complainant.

Himachal Pradesh penalises the complainant up to Rs. 25,000 if the complaint is found to be “intentionally false, vexatious or malafide.”²⁸ This provision is unprecedented and unjustified. It discourages potential victims of police misconduct from bringing complaints before the authority.

Composition and Selection Process

The effectiveness of PCAs is determined by the Chair and members who comprise them. The Court and numerous reports by Committees examining police reform have laid down the membership. The Model Bill additionally provides the eligibility and disqualification criteria for the Chairperson as well as the members. In the Court’s scheme, the composition was designed to ensure that members are not drawn from serving police or government officials. Every State government which

enacted new legislation or passed government orders establishing PCAs has violated this crucial element of the directive. It must be added that the manner of selection of the members and Chairperson also goes a long way in determining the independence of the Authorities.

Appointment of Political and Executive Members as Chairpersons

PCAs should be free of executive and political influence. The State level authority must be chaired by a retired High Court or Supreme Court judge who shall be chosen out of a panel of names proposed by the Chief Justice of the State. The district level authority must be headed by a retired District judge, chosen out of a panel of names proposed by the Chief Justice or Judge of the High Court.

In nine States,²⁹ retired judges are appointed as Chairpersons of the State and district PCA as stipulated by the Court. Sadly, States and UT administrators also appoint legislative representatives, retired and serving police officers, and retired and serving civil servants as Chairpersons.³⁰

When serving civil servants or legislative representatives are appointed as Chairpersons, the PCA no longer remains independent from the State government. Moreover, it is important for a retired member of the judiciary to head the authority. The High Court of Punjab and Haryana decided a Public Interest Litigation where a retired civil servant was appointed as the Chairperson of the Haryana PCA.³¹ The Court held that retired officers of civil services or police cannot be appointed as Chairpersons since they do not possess the acumen and expertise of law and judicial processes. It further held that if the leader is from an organisation or institution detached from the executive, including the police, the public perception of the PCA being an independent body, immune to police and executive influences, can be maintained.

Appointment of Serving Police Officers and Civil Servants as Members

The Chairperson of the PCA must be assisted by a team of independent members with proven records of commitment to human rights and due process. The authorities at both levels may be assisted by 3-5 members to be chosen by the State government from a panel finalised by the

State Human Rights Commission or Lokayukta or State Public Service Commission. The members may include retired civil servants, police officers or officers from any other department, or from civil society.

In eight States, PCAs have independent members selected through a transparent selection panel.³² In the remaining States, governments appoint members on their sole discretion to the complaints bodies, neglecting the check and balance of an independent selection panel. Moreover, some Acts and orders do not even provide for the appointment of independent members. In nine States and three UTs, persons holding official posts automatically become *de facto* members of the PCAs.³³

Appointing serving civil servants and police officers as members of the body is completely against the directive of the Court. This defeats a fundamental principle of natural justice: that no one can be a judge in their own case.

The directive also requires that the PCA comprise a woman. This is not a pre-requisite in nine States³⁴ and all the Union Territories.

The PCAs lack diversity and is largely filled with non-independent members which affects the autonomy of the bodies and redressal of public grievances. Appointing serving police officers and civil servants as members defeats the purpose of forming an external civilian oversight body. When serving police officers are part of this body, such as the district Superintendent of Police, there is a high probability of issues of conflict of interest arising. The Court's design provides a wide array of persons who can inquire independently and thereby do not warrant the membership to be drawn from serving officials.

Non-appointment of Independent Investigators

An independent PCA requires a dedicated team of independent investigators, recruited by the authorities themselves to conduct field inquiries. The Supreme Court stated that the PCAs may use the services of retired investigators from Intelligence, CID and Vigilance for conducting field work in the ongoing inquiries. This provision is absent in the Model Police Bill. Similarly, it is also conspicuously missing in most of the police acts and orders.

In seven States,³⁵ police legislations mandate the appointment of independent investigators to conduct field inquiries for the authorities. In four States,³⁶ the law provides that the PCA has the power to appoint *adequate staff with requisite skills*. This does not specifically refer to

the appointment of independent investigators but the broad nature of the phrasing allows room for such appointments.

Uttarakhand PCA has particularly emphasised the need for the power to appoint or be provided with a separate team of investigators for these purposes. The annual report of the body states that the functioning of the PCA is severely affected in the absence of such a team. The PCA inevitably takes assistance from the police department which compromises with the quality and integrity of investigation. Independent investigators help the PCA to function separately from the police department.

Decisions and Directions

On the completion of the inquiry, the PCA may recommend the registration of an FIR against the implicated police officer(s), and/or the initiation of disciplinary proceedings against the implicated police officer(s). These recommendations must be *binding* on the police department and State governments. Most statutory provisions and executive orders have unfailingly diluted this power. The decisions are only recommendatory rather than being binding as stipulated by the Court and the Model Police Bill. In ten States,³⁷ PCA recommendations are binding. In 16 States,³⁸ the recommendations are subject to review by the State government.

Over and above issuing recommendations, in four States, the PCAs can order the government to pay monetary compensation to victims of police misconduct.³⁹ Granting monetary compensation acts as an interim relief to the victims pending the departmental action/registration of FIR against the personnel and the adjudication of the matter by Courts. This can amplify and empower the role of PCAs as a mechanism for redress and can be emulated.

Additionally, PCAs also need the power to monitor the implementation of their recommendations. In Karnataka, the former Chairperson of the State PCA complained that the body is *toothless*, since it merely submits a report to the State government which may or may not be implemented.⁴⁰ In eight States, PCAs can monitor the status of the implementation of their recommendations.⁴¹ This ensures that the decisions and directions of the authority not just remain on paper.

The setting up of PCAs is not sufficient to address police misconduct. These authorities also need to be empowered to issue

binding decisions and follow up on their implementation. Any decision reviewed and altered by the State government is no longer a recommendation issued by an independent external oversight body.

Absence of Rules of Procedure

PCAs are nascent institutions which need to establish formal rules of procedure detailing the manner of receipt of complaints, conduct of inquiry, powers to summon evidence⁴² and day-to-day functioning. These authorities are meant to be full-time bodies with specific mandates. The absence of rules of procedure leads to numerous difficulties, constraining the efficiency of the authority. The rules need to guide and shape the inquiry process. The rules, once framed, are approved by the legislature.

PCAs and State governments are lagging on this front. Six State governments have given the authorities the power to frame their rules.⁴³ Of these, only four States have framed rules.⁴⁴ Three States that do not mandate Rules of Procedure, also have framed them.⁴⁵

The nuances relating to the submission of complaints, time frame for completing inquiry, inquiry process, staffing and administration are not covered by Police Acts or notifications that establish PCAs. Complainants are mostly unaware of the procedure. The framing of clear rules of procedure would serve as a user guide for the authorities while conducting the inquiries and also, the complainants. Hence, detailed rules of procedure will help in the smooth functioning of the authority.

Conclusion

Police Complaints Authorities are integral to keep a check on abuse of power by the police. In the absence of this mechanism, victims of police abuse are forced to approach the police who violated their rights in the first place. More than a decade after the Supreme Court's judgment, the majority of States are yet to set up PCAs and make them functional. Not a single State has complied with the Court's directive in letter and spirit.

A considerable number of PCAs either remain on paper or are non-functional at present. In States where PCAs became functional, there is a severe problem with making appointments. In Haryana, Goa

and Karnataka, PCAs have been without a Chairperson for months! Yet, State governments have not made an effort to fill up these positions. Scores of complaints are filed in the authorities but there is no Chairperson to adjudicate, leading to tremendous delay and thereby denial of redress.

To add to this, there is a serious problem of involving the executive and the police in this ‘civilian oversight body.’ It is essential that all States streamline the corresponding laws with the Supreme Court’s order and the Model Police Bill to make the PCAs truly independent. State governments must make a conscious effort to make the selection, investigation and decision-making process of the authorities independent.

When PCAs do not have the power to appoint independent investigators, issue binding recommendations and monitor their implementation, the recommendations and functioning seems insignificant. The examples from Karnataka and Uttarakhand shows that the authorities are discouraged by this lack of power.

The States and UTs must have strong laws setting up independent PCAs. These civilian bodies must be representative of different sections and also diverse in skill sets and perspectives. In addition, the bodies should themselves be given sufficient powers, infrastructure, human resources and financial resources to work separately from the police. An independent PCA goes a long way in getting the police the people want and need in a democratic society.

Notes

- ¹ Prakash Singh and Ors. vs. Union of India and Ors., (2006) 8 SCC 1
- ² Annual Report 2013-2014, National Human Rights Commission, Available at http://nhrc.nic.in/Documents/AR/NHRC_AR_EN_2013-2014.pdf, pg. 370
- ³ Annual Report 2014-2015, National Human Rights Commission, Available at http://nhrc.nic.in/Documents/AR/NHRC_AR_EN_2014-2015.pdf, pg. 353
- ⁴ Annual Report 2015-2016, National Human Rights Commission, Available at http://nhrc.nic.in/Documents/AR/NHRC_AR_EN_2015-2016.pdf, pg. 381
- ⁵ Feudal Forces: Democratic Nations – Police accountability in Commonwealth South Asia, 2007, pg. 70
- ⁶ Ibid.
- ⁷ (2006) 8 SCC 1

8. Policing is a State subject under List II of the Seventh Schedule of the Constitution of India. State legislation on policing falls within the domain of the State government and legislature. The Ministry of Home Affairs oversees, and Parliament drafts and passes laws on, policing for the Union Territories.
9. Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Meghalaya, Mizoram, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura and Uttarakhand.
10. Andhra Pradesh, Arunachal Pradesh, Goa, Jammu & Kashmir, Jharkhand, Madhya Pradesh, Manipur, Nagaland, Odisha, Telangana, Uttar Pradesh and West Bengal.
11. Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Meghalaya, Mizoram, Punjab, Rajasthan, Sikkim, Tripura, Uttarakhand, Andhra Pradesh, Madhya Pradesh and Manipur.
12. Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Goa, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttarakhand and West Bengal.
13. Andhra Pradesh, Assam, Bihar, Gujarat, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Nagaland, Punjab, Rajasthan and Tamil Nadu.
14. Bihar and Madhya Pradesh.
15. As per Notification No. 14040/45/2009, dated March 2010, issued by the Ministry of Home Affairs, Government of India.
16. Assam, Chhattisgarh, Goa, Tripura, Uttarakhand, Haryana, Jharkhand, Karnataka, Kerala, Maharashtra, Meghalaya, Nagaland, Punjab, Rajasthan and Tamil Nadu.
17. Madhya Pradesh, Karnataka, Kerala, Maharashtra, Rajasthan Nagaland.
18. As per response received to an RTI application.
19. Press Trust of India, AAP MLAs PIL against police complaints authority, HC seeks Centre stand, Business Standard, available on https://www.business-standard.com/article/pti-stories/aap-mla-s-pil-against-police-complaint-authority-hc-seeks-centre-stand-118080700898_1.html, dated 7 August 2018.
20. Clause 81 of the Model Police Bill, 2015 empowers the District authorities to receive complaints against police personnel from the public and forward the same to the State PCAs for conducting inquiry.
21. Section 56, Bihar Police Act, 2007.
22. As per an affidavit filed to the Supreme Court of India in Prakash Singh and Ors. vs. Union of India and Ors. (2006) 8 SCC 1.
23. Ibid.

24. Haryana, Kerala, Mizoram, Rajasthan and Tripura.
25. Assam, Chhattisgarh, Gujarat, Punjab, Sikkim and Tamil Nadu.
26. Meghalaya, Mizoram, Sikkim and Tamil Nadu.
27. Assam, Chhattisgarh, Haryana, Mizoram, Punjab and Tamil Nadu.
28. Section 100(2), Himachal Pradesh Police Act, 2007.
29. Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Kerala, Maharashtra, Manipur, Nagaland and Sikkim.
30. Bihar, Himachal Pradesh, Karnataka, Odisha, Rajasthan, Madhya Pradesh, Daman & Diu, Dadra & Nagar Haveli
31. H.C. Arora and Ors. vs. Union of India and Ors., 2015(4) SCT 564 (P&H).
32. West Bengal, Sikkim, Nagaland, Maharashtra, Karnataka, Kerala, Andhra Pradesh and Arunachal Pradesh.
33. Bihar, Gujarat, Jharkhand, Karnataka, Kerala, Rajasthan, Sikkim, Tamil Nadu, West Bengal, Daman & Diu, Dadra & Nagar Haveli and Lakshadweep.
34. Bihar, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Tamil Nadu, West Bengal and Meghalaya. In Karnataka, the State PCA must have a woman but this is not a prerequisite for the district level authority.
35. Andhra Pradesh, Arunachal Pradesh, Assam, Haryana, Goa, Sikkim and Tamil Nadu.
36. Meghalaya, Mizoram, Sikkim and Tripura
37. Andhra Pradesh, Arunachal Pradesh, Assam, Kerala, Maharashtra, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura.
38. Bihar, Chhattisgarh, Goa Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Manipur, Odisha, Punjab, Rajasthan, Tamil Nadu, Uttarakhand and West Bengal.
39. Meghalaya, Mizoram, Sikkim and Tripura.
40. Bosky Khanna, Police watchdog authority grows a head, but no teeth, available on <http://bengaluru.citizenmatters.in/police-complaint-authority-no-staff-functional-pca-5798>, dated 21 October 2013.
41. Assam, Himachal Pradesh, Jharkhand, Meghalaya, Mizoram, Rajasthan, Tripura and Uttarakhand.
42. It is critical to have the powers of a civil court under as per the Civil Procedure Code, 1908. This will empower to PCAs to summon and enforce the attendance of witnesses, receive evidence of affidavits, requisition any public record, etc.
43. Assam, Karnataka, Meghalaya, Sikkim, Tripura and Uttarakhand.
44. Jharkhand, Tripura, Sikkim and Uttarakhand.
45. Chhattisgarh, Madhya Pradesh and Maharashtra.

People and the Police Findings from the Status of Policing in India Report, 2018

Radhika Jha*

The Status of Policing in India Report 2018: A Study of Performance and Perceptions is a study conducted by Common Cause, in collaboration with the Lokniti team of the Centre for the Study of Developing Societies to arrive at statewise performance of police in a comparable framework, along with findings from a survey conducted amongst the general public regarding their perception of the functioning of the police and their role in India. It contrasts the findings of a nationwide survey of 22 States¹ with the insights derived from objective data accessed and collated from the police establishments. The idea is to work towards restoring the citizens' trust and confidence in the police force by studying the gaps in the levels of their performances and the peoples' expectations from them.

The study looked at two aspects of policing—how the police in different States fares in terms of the statistical data released by the National Crime Records Bureau (NCRB) and Bureau of Police Research and Development (BPR&D), and how it fares in terms of the perceptions and attitudes of the general public towards the institution. It also analyses the performance audit of police forces in different States conducted by the Comptroller and Auditor General (C&AG) of India.

A Momentous Non-Compliance: The Fate of *Prakash Singh vs Union of India*²

India has a long history of making big promises on police reforms without effective delivery. *Common Cause Journal* (July-September,

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2015) lists all important committees and commissions formed since the colonial period (Ayaz, 2015)³ However, India's watershed moment came on September 22, 2006, in *Prakash Singh vs Union of India*, when after over a decade of hearing the petition, and after the failure of the States to implement recommendations of a number of expert panels, the Supreme Court delivered a momentous judgement that contained specific guidelines for the implementation of police reforms. Its implementation in the past 12 years is a story of a monumental non-compliance.

Prakash Singh vs Union of India, 2006 was a landmark judgement that sought to make it incumbent upon the government to make much-needed changes in policy which were long overdue. The judgement was a huge victory for many and the specific nature of the directions given by the Court made it seem that there was little or no scope for non-compliance. The seven directives mandate the Union and the State governments to set up the following institutions or take specific actions:

1. State Security Commissions (SSC) with the leader of Opposition, judges and independent members to ensure that the State police is able to function independent of unwarranted government control, influence or pressure.
2. The Director General of Police (DGP) to be selected from amongst the three senior-most officers and to have a minimum tenure of 2 years.
3. Minimum tenure of I.G. of Police and other officers on operational duties should also have a prescribed minimum tenure of two years.
4. Separate wing for investigation of cases.
5. Police Establishment Board (PEB) for all transfers, postings, promotions and service matters of officers up to the Dy Superintendent of Police rank, and to hear their appeals.
6. Police Complaints Authority: Both at the State and district levels to hear complaints against police officers up to the rank of Dy Superintendent of Police.
7. National Security Commission (NSC) for selection and placement of Chiefs of the Central Police Organisations (CPOs) and to review the effectiveness of the police forces.

These directives are a culmination of the main recommendations of the different committees on police reforms. As pointed out by Joshi (2013), some critics have called these "National Police Commission

model of reforms” i.e., with focus only around the reduction of political influence on policing, instead of addressing structural problems.⁴ However, there is no denying the fact that these directives could be the first set of building blocks for more reforms in future.

The Role of the States

Under the Constitution, the law and order, including the police, is a State subject. The States are empowered to enact their own laws but most of them still retain features of the Indian Police Act, 1861, which is not just archaic but also colonial. Seventy years after Independence, the police establishments in India continue to function in the same repressive way — with a rigid hierarchy of control and an unilinear command system — and largely without transparency and accountability required under norms of democratic governance.

It is hardly an exaggeration to say that almost all States of India are guilty of the contempt of Court for not implementing the Apex Court’s directives fully and unequivocally. Their failure is at both levels — in absolute non-compliance with the directives, as well as in inserting dubious provisos in legislation which run counter to the spirit of the judgement. Mr. Prakash Singh, the main petitioner in the 2006 case, has filed a contempt petition in the Supreme Court for effective implementation of the directives. This petition is still being heard and the case is nowhere near resolution, 11 years after it was first filed.

The State governments are seriously deficient in compliance to the directives and are, in effect, in flagrant violation of the Supreme Court’s order. Thirteen States have enacted new legislation on police after the 2006 judgement, and only these States have been studied in this analysis. For instance, all of these 13 States have a provision for a State Security Commission (SSC), its membership seems seriously compromised i.e., five States do not have provisions for the Leader of Opposition to be a member, and four States do not provide for non-political or independent member. Worse still, specific provisions to make the recommendations of the SSC binding on the government exist only in two States, Kerala and Himachal Pradesh.

The other two bodies directed to be formed by the Court – Police Establishment Board (PEB) and the Police Complaints Authority (PCA)— have similarly been weakened through legislative loopholes. Kerala and Haryana Police Acts have altogether done away with the

core function of deciding transfers and postings of officers, while Bihar Police Act does not have a provision for such a board, all in violation of the Court's order. The recommendations of the PEB have been made binding only in Karnataka, Kerala and Uttarakhand. Similarly, in the case of Police Complaints Authority (PCA), specific legal provisions making its recommendations binding exist in only two States – Himachal Pradesh and Kerala, and in Maharashtra, a provision has been made wherein the recommendation may be rejected in exceptional cases by the State government for reasons given in writing. These, and many other examples, show that the Supreme Court directives are being observed in breach rather than in compliance.

Overall, Himachal Pradesh is found to be the most compliant with the Supreme Court directives, with Uttarakhand close behind. Kerala too has shown relatively better compliance with the SC directives and has made progress on the issue of police autonomy. In other words, 26 out of 29 States are wilfully violating the Supreme Court's directives with impunity. The Union Government too was to form a National Security Commission along the lines of the SSC. This, however, was formed in 2017 more than 10 years after the SC judgement, according to a January 2018 statement given by Minister of State for Home Affairs, Hansraj Gangaram Ahir in Parliament.⁵

Beyond the SC Directives

One crucial problem with the police structure which has not found a sufficient safeguard in the Court directives is that of discrimination against the subordinate rank officers and undue abuse of authority by the senior rank officers. This hierarchy is so deeply ingrained within the police structure that the Police Act of 1861 continues to use the terminology “inferior officers” under Section 7 of the Act.⁶ Cases of harassment by senior police officers meted out to those in the subordinate ranks are common news, and the number of police officers committing suicides is disproportionately higher than the general population. In 2015 alone, a total of 167 police personnel committed suicide in India.

Besides cases of harassment by seniors, dissatisfaction with job and lack of professional growth continue to ail the Indian Police. According to a study conducted by BPRD in 1990, only 22 per cent police constabulary could get promotion, and the remaining 78 per cent were stagnating at the same rank in which they joined the force (Joshi

et al., 1990).⁷ Such, and related issues that have an effect on the overall police functioning and efficiency, are some issues that have not been adequately addressed.

Another crucial omission is Section 197 of the Criminal Procedure Code (CrPC), 1973, which makes provisions for a prior sanction by the government for the prosecution of judges and public servants.⁸ Section 19 of the Prevention of Corruption Act, 1988, also makes it mandatory to have a previous sanction by the government for Court to take cognizance of an offence under the Act. Thus, police officers in effect have been protected through legal measures from prosecution without government sanction.

While the PCA has been set up as an institution to deal with grievances and complaints against police officers, but in cases where the recommendations of the PCA are not binding, (which is the case with 10 out of the 13 States studied above), these forums will be rendered futile since further appeals in the Courts will be complicated. According to media reports (M, Raghava, 2012), sanctions for prosecution of police officers have not been provided by State governments in a majority of cases, such as in the case of Karnataka where the government refused to give sanction for prosecuting seven officials against whom the Lokayukta had conducted raids and found assets disproportionate to their known sources of income.⁹ In the *Subramaniam Swamy* case,¹⁰ the Court gave guidelines to Parliament to introduce a time limit of three months in Section 19 of the Prevention of Corruption Act within which the decision regarding a sanction should be taken, failing which the permission will be deemed to have been granted. However, the legal position in this matter is not settled, and Section 19 continues to apply in cases of corruption against police officers.

Police Performance: What the Data Tells Us

The performance of police in different States was measured by taking 43 variables from the following reports by the NCRB and BPRD – *Crime in India (NCRB)*, *Prison Statistics India (NCRB)* and *Data on Police Organisations (BPRD)*. These variables were used for creating indices for a period of five years, 2012 to 2016, on the major parameters of crime, infrastructure, prisons, disposal of cases, diversity in police

and disposal of cases of crimes against SCs, STs, women and children. Snapshots from the analysis of official data are given below.

Crime Rates

Crime is a slippery issue. While criminologists tell us that an increase in crime rate can be an indicator of increased reporting in a State—a positive development – numerous studies, including this one, point to a strong correlation between decreasing crime and improved public perception of the police. Based on people’s perception of the crime rates in their locality, satisfaction with the police was found to be highest (29 per cent) in areas where they perceived the crime to have reduced in the last five years. The correlation, therefore, can be said to be this: better policing is positively related to a decrease in the *actual* rate of crime in a locality, and not the *official* rate of crime.

Conversely, official rates of crime are tainted as being unreliable measures of crime owing to the huge levels of under-reporting, attributable to numerous reasons, ranging from conscious efforts by the State to keep the numbers low to avoid bad publicity, to lack of public trust in the police system, preventing people from approaching the police except when unavoidable. Whatever the case, in the absence of a reliable source of data on victimisation, which would capture the extent of under-reporting, it becomes necessary for any study on police to look at the crime rates.

The crime rates themselves, however, somewhat reflect the level of under-reporting. When we look at the rate of total cognisable crimes in the States, and put it in a comparable matrix with the rate of violent crimes, we notice that in States such as Bihar, Assam, West Bengal and Delhi, the violent crime index is much higher than the total cognisable crime index. In contrast, in States such as Kerala, Tamil Nadu and Uttarakhand, the situation is the reverse, with overall crime index being higher than the violent crime index. Based on the presumption that these are crimes much more difficult to suppress, if we take the violent crime index as a measure of crime prevalence in a State, we can assume that in States like Bihar and Delhi, where violent crime far exceeds the total cognisable crimes (when seen through comparable indices), the under-reporting of petty crimes is also high.

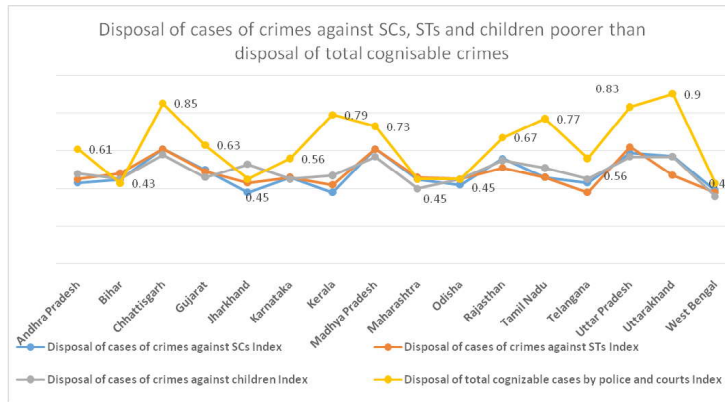
Another finding from the study of crime rates is that while the rate of total cognisable crimes has remained more or less constant in the

last years, the rate of crimes against SCs, STs, women and children has been increasing. This data, again, could be read contrastingly. On the one hand, it could be taken to mean simply that the crime against vulnerable groups are increasing over the years. On the other hand, however, it could reflect the improvement in reporting of cases of crimes against SCs, STs, women and children due to the creation of an enabling structure. Particularly with respect to crimes against women and children, introduction of new laws such as the Criminal Law Amendment Act, 2013 and the Protection of Children from Sexual Offences Act, 2012 could be attributed to the increase in the number of cases of reported crimes against these populations. Nonetheless, the increase is significant, with, for instance, rate of crime against children increasing from 8.89 per lakh of children's population in 2012 to 24 in 2016, a nearly three times increase.

Marginalising the Marginalised

Taking cue from the above finding on increased rates of crime against SCs, STs, women and children, the finding from the analysis of official data that comes forth most starkly in the report is the systemic discrimination against these groups in the justice-delivery system.

To illustrate that, first, let us look at the disposal index. An analysis of the four measures of disposal – chargesheeting rate, conviction rate, disposal percentage of cases by Courts and disposal percentage of cases by the police—shows us that disposal by the police is uniformly better than the disposal by the Courts. Another key finding, however, is that the disposal of total cognisable cases, when taken as a cumulative index of the four variables mentioned above, is much better than the disposal index of cases of crimes against SCs, STs and children, while data for disposal of cases of crimes against women was not comparable because data for some years was unavailable. But even for that group, it can be assumed that the differences exist, seeing as the conviction rate for crimes against women is 21.1 per cent, compared to the conviction rate of 75 per cent of total cognisable crimes, a difference of more than three times. The below figure shows the gaps between disposal of total cognisable crimes and that of crimes against SCs, STs, women and children, with only a handful of States showing uniformity in the indices.



While the above shows a systemic prejudice while dealing with cases of crimes against the vulnerable groups, data from the prisons shows a similar systemic prejudice resulting in higher incarceration of the SCs, STs and Muslims. When compared to the population proportion of these groups in the respective States, most of the States have a disproportionately higher population of SCs, STs and Muslims in the prisons. This stands true for 18 (out of 22 States) in case of SCs, 19 States in case of STs and all 22 States in case of Muslims. The disproportionality is to the extent of more than three times the proportion of population in Punjab, Odisha and Nagaland in the year 2015 in case of Muslims in prisons.

Conversely, these same groups are under-represented in the police force. The data shows that out of the 22 States studied, 19 have failed to meet the sanctioned reservation quota for SCs, 16 have failed to meet the quota for STs and 13, or more than half, have failed to meet the sanctioned reservation quota for OBCs. With regards to women, the Indian police force currently has slightly more than 7 per cent women, a far cry from the modest benchmark of 33 per cent set by the Ministry of Home Affairs.

Police Perception: What the General Public Tell Us

This section covers some of the key findings from the survey conducted in 22 Indian States with the sample size of 15,563. The sample was representative of groups such as SCs, STs, women, Muslims, Sikhs,

Christians and urban population and the responses were weighted in accordance with the actual population of these social groups in the States.

Experience with the Police

Only a small proportion of Indians have had police contact in the last 4-5 years, 14 per cent, while a majority (82 per cent) have not had any contact in the recent past. This level of interaction is much lower than in the developed countries, such as 26 per cent in USA and 31 per cent in England. Of the 14 per cent who had had an experience with the police in the recent past, a majority, i.e., 67 per cent had themselves contacted the police, while 17 per cent had been contacted by the police.

What is interesting is the profile of persons who had been contacted by the police. It was found that Adivasis, at 23 per cent, and Muslims at 21 per cent were most likely to have been contacted by the police, while upper caste Hindus were the least likely to have been contacted by the police, at 13 per cent. When we look at this distribution from the prism of class, we find that the police is nearly twice as likely to contact the poor (12 per cent) than the rich (12 per cent), while the rich are much more likely to contact the police themselves, at 74 per cent, than the poor (60 per cent). These differences, statistically significant, point to the differences in experiences with the police at the primary level of police contact, and suggest that discrimination begins from the point of contact itself.

Bribery is a major issue in Indian administration, and similar experiences were related by the people in terms of their experience with the police. One in three persons, i.e. 34 per cent respondents said they had to pay a bribe to get their work done by the police. Again, the likelihood of a poor person paying a bribe, at 64 per cent, is higher than the likelihood of a rich person having to pay a bribe, at 50 per cent.

Trust and Satisfaction with the Police

Regardless of the above, the levels of satisfaction of the people who had had an experience with the police was considerably high, at 65 per cent, pointing to the fact that people, based on their experience with the police, have a majorly positive opinion about the police. Satisfaction

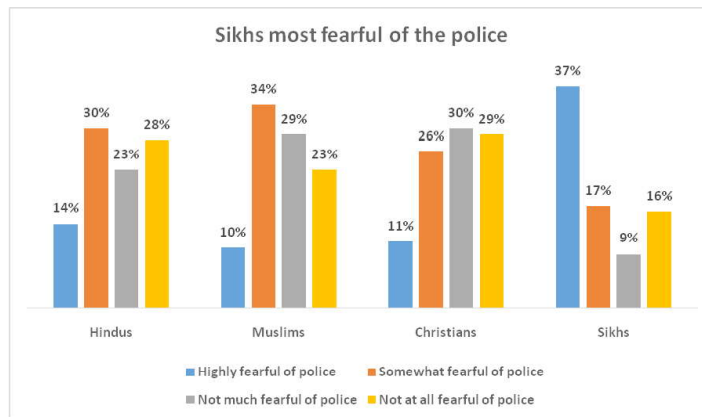
also appears to be closely associated with the perception of crime in a locality, with the highest levels of satisfaction coming from localities where the respondents perceived crime to have decreased in the last five years.

In terms of trust, it was found that while the overall level of trust is high with 69 per cent respondents reporting varying levels of trust in the police, the marginalised communities are the most distrustful of the police. STs, at 37 per cent, are the most distrustful, followed by Muslims (32 per cent), OBCs (30 per cent), SCs (29 per cent) and the upper caste Hindus are the least distrustful at 27 per cent. Thirteen per cent of the non-literates are distrustful of the police, more than three times those who are highly educated (4 per cent).

Fear of Police

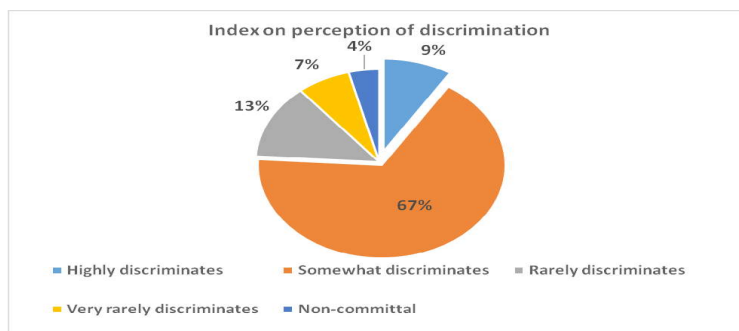
Among the overall sample, the fear of police was found to be significantly high with 44 per cent respondents fearing the police in varying degrees. While 14 per cent are highly fearful of the police, 30 per cent are somewhat fearful of the police.

A curious finding in this parameter is the religion-wise disaggregation of the fear of police index. Sikhs, located mainly in Punjab, are the most fearful of the police, with 37 per cent Sikhs reporting being highly fearful of the police, much above the national average of 14 per cent. Among the Hindu community, the upper castes are the least fearful of the police, while the OBCs and SCs are the most fearful.



Discrimination by the Police

Nearly 8 out of 10 respondents said that the police discriminates on various issues, with 1 in 10 believing that there is “high” discrimination by the police. Respondents were most likely to report class-based discrimination (51 per cent), followed by discrimination on the basis of gender (30 per cent), caste (25 per cent) and religion (19 per cent).



When asked about whether the police falsely implicates Dalits for petty offenses, 38 per cent of the overall respondents agreed with the statement. Similarly, 28 per cent felt that Adivasis are falsely implicated on charges of Maoism and 27 per cent agreed that Muslims are falsely implicated in terrorism related cases. When the responses of only the Muslim respondents are seen for the last statement, the agreement percentage goes up to 47 per cent.

Perception of Police

In terms of the overall perception of the police, similar to the levels of trust and satisfaction, a majority, 66 per cent, displayed a positive perception of the police. 26 per cent had a very positive perception of the police, while 40 percent had a somewhat positive perception of police. States such as Haryana (71 per cent) and Himachal (70 per cent) had the highest proportion of respondents reporting a very positive perception of police, while states such as UP (8 per cent) and Punjab (9 per cent) had the least number of respondents reporting so.

People’s perception of police officers based on their gender is somewhat skewed. While people are more likely to believe that police women are more honest (21 per cent said police women are more

honest while 14 per cent said police men are more honest), they think that policemen are more hardworking (23 per cent policemen compared to 13 per cent policewomen) and they are more likely to approach a policeman (21 per cent) instead of a policewoman (15 per cent) for help. This points to a bias not only within the police force, but also by the general public against female police officers.

Conclusion

The larger story of police in India – as it emerges through the study – is a story of vulnerabilities. While it enjoys a high degree of trust, satisfaction and positive perception by the public, a necessity in any democracy, a look at the more nuanced findings reveals the exclusion of vulnerable communities from the benefits of policing. In nearly all indicators, whether in the survey or in the analysis of official data, there is a clear pattern of disadvantage towards the SCs, STs, OBCs, Muslim, women, poor, and migrants, often overlapping categories. This is an important aspect that needs to be recognised and addressed in any effort for bringing in police reforms in the country.

The performance evaluation by the C&AG of the police and prisons in different States, also analysed in the later parts of the report, tells a sad tale of structural inefficiencies and malpractices. With unexplained and unscrupulous diversion of funds, under-utilisation of resources, absence of basic facilities and substandard infrastructure, it is almost inconceivable how the police system continues to remain intact and to earn the trust of the public. Unless these structural issues, whether of infrastructure or of discrimination, are corrected, India cannot hope to meaningfully reform its criminal justice system.

Notes

- ¹ The States covered in the study are: Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Nagaland, Odisha, Punjab, Rajasthan, Tamil Nadu, Telangana, Uttar Pradesh, Uttarakhand, West Bengal, Delhi.
- ² The following section is an excerpt from The Status of Policing in India Report 2018: A Study of Performance and Perceptions, Chapter 1: Let the Numbers Speak.

- ³ Ayaz, Shakeb. "Police Reforms: A Chronology" *Common Cause Journal*, 34, no. 3 (July-September 2015): 14-24.
- ⁴ Joshi, G.P. *Policing in India: Some Unpleasant Essays*. New Delhi: Atlantic and Distributors (P) Ltd., 2013.
- ⁵ Ministry of Home Affairs, Government of India. "Setting up of National Security Commission," January 03, 2018, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=175277> (accessed February 15, 2018). *Prakash Singh vs Union of India*, Writ Petition (Civil) 310 of 1996
- ⁶ Section 7, The Police Act, 1861: "Appointment, dismissal, etc. of inferior officers".
- ⁷ Joshi G.P., Sharma P.P.P., Bedi B.S. and Sharma J.K. "Promotion Prospects of Constabulary in the Police". Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, 1990.
- ⁸ This was the point of contention in the case of *Dr. Subramaniam Swamy vs Dr. Manmohan Singh and Anr.*, 2012
- ⁹ M, Raghava "Will prosecution of five police officers be sanctioned?" *The Hindu*, March 23, 2012. <http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/will-prosecution-of-five-police-officers-be-sanctioned/article3166010.ece> (accessed November 27, 2017).
- ¹⁰ *Dr. Subramaniam Swamy vs Dr. Manmohan Singh and Anr.*, 2012 Civil Appeal No. 1193 of 2012 (Arising out of SLP (C) No. 27535 of 2010).

Police Reforms - A Categorical Imperative

Sankar Sen*

Directives of the Supreme Court on police reforms, recommended by National Police Commission have been perfunctorily implemented in most of the States. The apex court had issued clear directives to the Central and State governments to insulate the police from extraneous pressures and influence, by implementing the core reforms recommended by the National Police Commission (1978-81). Important directives of the court in Prakash Singh's case (2006), included, inter alia, fixed tenure of two years for DG of Police, separation of law and order from the investigation wing of the police, setting up Police Establishment Boards to decide transfers, postings and other service related matters of police officers up to the rank of Deputy Superintendent of police and appointment of State Security Commissions to ensure that the political executives are not able to exert unwarranted, baneful pressure and influence on police. Unfortunately, recommendations of the apex court remained unimplemented. Most of the State governments dragged their feet, and tried to scuttle reforms under various pretexts. The truth of the matter is that political masters did not want to give up their stranglehold over the police. The apex court also failed to crack the whip and force the recalcitrant States to implement the directives of the court. It refrained from adopting a tough, no-nonsense line and extended timelines for implementation of reforms by the State governments. Very recently, the court has again intervened and directed that the State governments shall not arbitrarily appoint heads of police forces and

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laid down a set of guidelines that made it necessary for the State governments to get a nod of the Union Police Service Commission before filling up the post of the top cop. However, in view of the determined opposition of the political masters, it would be very difficult to implement core structural reforms in the police only on the strength of the directives of the court. The road ahead is going to be bumpy and the outcome uncertain. But the issue of police reforms has to be viewed in a wider perspective. The ambit of police reforms need not be confined only to insulation of the police from extraneous political pressures, though this is an imperative reform. There are many other areas of policing crying for reforms, where determined police leaders can usher in reforms and qualitatively improve the functioning of the police on their own.

An essential police reform that brooks no delay in empowerment of the police constabulary. Police constables constitute almost 70 per cent of the police force. The constables of the present day have moved far from the predominantly mechanical roles assigned to them in 1902 Police Commission. They now interact with the people in a variety of situations where they have to apply their mind and exercise judgement and enforce law with public understanding and cooperation. Any reform and restructuring of the police system will not last unless the mass base of the pyramid is rendered healthy and efficient.

It is a sad fact that a large number of constables retire in the same rank after more than thirty years of service. They may not get promotion even by one rank in their entire service career. Thus, this promotional structure in the police system does not enable and fulfil their legitimate career ambitions. The police constable must cease, as David Bayley has said, to remain as “spear carriers in the police drama. They have to be major actors standing at the centre of the stage.”

The Second Administrative Reforms Commission, in its report on public order, has strongly advocated the need to upgrade the skill and training of the constables. It recommended that instead of recruiting constables, who are matriculates, it would be better to recruit graduates at the starting point of the civil police, and give them the stature, assistance and respect. It calculated that about 700 graduate Assistant Sub Inspectors can be recruited against vacancies of 1,000 Constables, without any serious financial burden. There are other in-house reforms that can be implemented, without any serious impediment.

There is also acute shortage of manpower. A large number of vacancies exist in different ranks. In India, ratio of ordinary policemen for 1,000 people is 1.2, i.e. little above half the level, recommended by the UN. Most of the officers and men are overworked and underpaid. They get no overtime allowance for extra hours put in by them. There are research studies showing that recent introduction of 8-hour shift in the State of Kerala, and in the city of Mumbai, has radically improved performance.

Police training is another area where reforms are overdue. Most of the State police training institutions are in a poor shape and ill-managed. "Police training has remained," as described in the report of the Gore Committee, "a ritual where unwilling and ill-equipped instructors are performing the rites of training and drilling to unwilling trainees." Further, most of the State institutions have become dumping grounds for inefficient and corrupt officers who transmit negative values to the trainees. In order to play the role of change agents, the trainers have to be picked up carefully. Gore Committee recommended suitable incentives including rent-free accommodation, special pay and recognition in the form of subsequent promotion and good posting for the trainers with a view to inducting the best available talents. Unfortunately, except in some central training institutions, incentives are not given in a regular way to the trainers. Very often, officers view posting in training institutions as punishment.

Though training is an important input for improving and optimising work performance of officers and men, it can, however, be effective, only when the organization has faith in it, and there is an organizational climate that encourages observance of principles taught during training. Unfortunately, over the years, an organizational climate and culture has grown up in the police, that does on frown upon abuse and misuse of force. Human rights culture in the police is poor, if not non-existent. A heavy responsibility rests upon senior officers to build a congenial organizational climate. Even now, in police forces of the country, policemen are appreciated for "hard-nosed policing." In many police organizations, rough and ready use of force, meet with peer approval. In order to gain peer approval, officers become over-assertive, and dispensers of rough and ready street justice, which alienates the police from the public. Police scholars, like Niederhoffer, have felt that many police officers, who constantly witness man's inhumanity to man, become disoriented, and display violent tricks in their encounter with citizens.

It is this unnecessary and avoidable use of force that causes considerable friction between the police and the community. This is an area where an urgent change in police culture is called for. Research on the use of deadly force has shown that strict administrative control has a restraining effect on the frequency with which officers use firearms.

In Indian police, peer group supervision is conspicuously missing. Peer supervision can be a powerful tool in ensuring police accountability and all-around good policing. In Japan, police officers work in pairs, with the understanding that one officer is responsible for ensuring the correct work and conduct of the other. In India also, policemen work in groups, but the ethos is against the assumption of mutual responsibility.

Another urgent reform is an all-out crusade against police corruption. Police corruption – corruption in the police is not a new phenomenon. Even the Police Commission in 1902 spoke about alarming corruption and malpractices of the police Darogas. The Bihar Police Commission (1960) quoted the saying of Sir John Shore: “The subordinate police officers in India were paid so low, as almost to justify corruption.” Even in the early sixties, when I had joined service and posted in Orissa, the number of officers of questionable integrity could be counted on fingers. The situation during the last two decades has dramatically changed. A nexus has developed between the political masters and police officers of different ranks. The problem is compounded by the fact that many senior police officers are now indulging in brazen acts of corruption by joining hands with the subordinate officers. This is ominous because corruption has a systemic character to it. Once it gets started, it tends to spread in the organization, affecting all its parts. Further, it has a pre-emptive quality. It prevents police leaders from exercising effective control over their subordinates, and curtail the organization’s capacity of dealing with various problems afflicting it. Unfortunately, senior officers of questionable integrity are favoured by politicians as they prove to be more malleable and amenable to pressures.

Another reform is for the supervisory officers to vigorously decry ‘noble cause corruption.’ Noble corruption in policing is defined as corruption committed in the name of good ends; corruption that happens in order to get the bad guys off the street. Noble cause corruption implies faith in the concept that the end justifies the means. The fact

is often forgotten that adoption of impermissible means may ultimately undermine the end.

Some justify torture to fight terrorism, and have argued that torture is justified in rare cases where there is “ticking bomb urgency.” But the hard fact is that once a degree of torture is permitted, it gives licence to the interrogator to use it systematically and abusively. It is seen that corruption, and particularly noble cause corruption, occurs in an atmosphere of arrogance, which generates a belief that police officers know what is best for society, and have the power and influence to punish anyone, who, according to their perception, constitute a threat to public order and safety. This is an area where senior officers have to take a resolute stand against misconduct and illegal practices of the subordinates.

Over the years also, there has been steady decline in police professionalism. This is an area which requires sustained attention of the police leaders. Police can command awe and respect only when it is professionally competent, and can measure up to the challenges posed by criminals and lawbreakers. Common people in a democratic society form their impression of the government by the manner in which the police function, as to most of the people police represent their most dramatic contact with the government. “To consider police as sub-professional, which is commonly the case down the world, is a mistake. It ensures that responsibility of the police will not be discharged with proper creativity and sensitivity.

Another much-needed reform is to make police accountable. In a democratic government, as has been perceptively stated in the report of the Independent Commission for Policing in Northern Ireland, 1994 (Patten Report), police should be accountable in two senses – the subordinate, or obedient sense, and the explanatory, or cooperative sense. In the subordinate sense the police are employed by the community to provide the service and the community should have means to ensure that it gets service it needs. The police are also subordinate to law just as ordinary citizens are. There should be robust arrangements to ensure effective policing because policing is not a task for police alone. Indeed accountability does not weaken but strengthen the police. Repressive police forces are weak police forces, though they operate under the illusion of strength. Civilians’ fear represents the source of weakness. People, who fear the police, do not cooperate with the police

in their investigation. Strong police forces function successfully because of the help and cooperation of the citizens they serve.

The National Human Rights Commission recommended establishment of District Complaints Authorities to ensure speedy enquiry into complaints against the police and speedy relief to the victims. Similar directives had been issued by the Supreme Court in the case of Prakash Singh. But both the State governments and police leadership are unwilling to establish such mechanisms on the specious plea that this will go to demoralize the police. They forget that an accountable police will command greater respect and co-operation from the public than an unfriendly and unaccountable police. Totalitarian States are called police States because the police remain beholden to certain individuals and groups and remain vulnerable to pressures from them.

Indeed, police reforms is a categorical imperative. Without meaningful police reforms good governance of the country would remain a utopia. Many reforms can be brought about by police leaders. In the police, there are many committed police officers and men, who are keen to bring about changes. Apathy of the civil society to the problems and constraints of the police is disheartening. However, only pressures and efforts from within can bring about some important reforms in the police. But at the same time, the exertions for insulation of the police from political pressures and influence must continue uninterrupted.

Quest For Police Reforms

D. K. Arya*

पैदा हुई पुलिस तो इबलीस ने ये कहा
लो अब हम भी साहिब-ए-औलाद हो गये

Satirist Akbar Allahabadi (1846-1921) is attributed to have mirrored the popular contemporary image of police in this couplet. People generally feel that if police is divested of the *danda*, anti-social elements would overtake the society, and thus acquiesce with the system. This perception has not changed and police are unable to shed their colonial past. Unquestioned obedience to masters negate efforts to actualise police reforms even if statute books specify them. Sirajuddaula lost the battle of Plassey and was paraded in handcuffs in the streets of Murshidabad. Despite Robert Clive's trepidations no one fired a shot, spat or threw a stone in defiance at the humiliation of their Nawab! Clive noted the subservience and things have not changed ever since.

An avowed philosophy for police has not been "declared." MHA's 1986 Code of Conduct for police is long on philosophy but short on good practices and issues like prohibition on torture. The 1902 police Commission acknowledged that the police was reviled as corrupt, inefficient and brutal. The leitmotif of creating the organization of police was consolidation of British Empire, beholden and accountable to it. An inexpensive instrument of state power, it delivered कम खर्च बाला, नशीन *kum kharch, bala nashin*. From 1767 onwards various attempts at police reforms including Torture Commission (1855), Police Commissions of 1860, 1902 and successive half-hearted efforts by some States, made cosmetic changes but fundamentally retained status quo. For the first time the NPC (1979-81) thoroughly delved deep and

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recommended reforms which went unheeded for three decades. Catena of police and criminal justice system reform committees of Prof. Gore (1971), Julio Ribiero, K.Padmanabhaiah, Justice Malimath, 2nd ARC headed by V Moily, faced the same fate. The NPC had suggested a draft Model Police Act which came to a naught. The government on the advice of SC appointed Soli Sorabji Committee to draft a Model Police Act (2006). It was indifferently adopted by some States and circumvented by others. Prakash Singh doggedly pursued his PIL from 1996 onwards and was able to cajole the Hon'ble Supreme Court to issue directives to all States, in 2006, on the seven cardinal issues identified by the NPC. The States have contumaciously used subterfuges to eschew honest implementation in spirit of Hon'ble SC directed reforms.

In the federal scheme of our Parliamentary system, law and order is a State subject (Art 246, List II, Schedule VII). However much the States may have wanted reforms and made cosmetic changes, they could not transgress the provisions of the Police Act of 1861. The Centre was unwilling to tread on the toes of the States. In this ambivalent situation police reforms were put on the back burner.

The NPC had recommended structural changes in police by making the *Thana* and not the district as the fulcrum of policing. This departure from set organizational structure would need metamorphic changes and disturb the police-magistracy equations. Such a move may work in urban centres but not for rural policing. The main cause of failure of reform efforts is that the root causes of police malfeasance have not been addressed. The *Thanedar* is responsible to keep crime and criminals under check and the supervisory officers are to keep the *Thanedar* under check. The Thana manpower was kept at the minimal and powers were vested in SP to punish the *Thanedar* for failure to check crime. The side effects of this philosophy of governance resulted in creating a culture of subservience, sycophancy, corruption, unlawful detention, torture, fabrication of evidence, burking and minimization of crime. Ends justified means. Ambivalence of authorities and police-politician nexus added to this deep rooted malaise.

No State is willing to let power slip by and share it with the community. The seven recommendations by NPC, are manifest issues and will, if implemented in letter and spirit, herald a new dawn for police. However, police need not wait for the dawn to appear and do the doable themselves within the ambit of law.

Have the police, considered doing the 'doable' as advised by Carnegie in his monumental work 'How to Win Friends and Influence People'? It will be futile to wait for SC or States to deliver the whole basket of reforms. Police should work out home-grown solutions and take up, brick by brick, less contentious procedural issues. Police need to look inwards not upwards, act as per law and themselves do the doable. Blaming politicians or our socio-cultural frailty for all the ills may give police lame excuses but can they escape culpability of omission?

The police motto is 'to serve and to protect' and not subservience to those in power. The UN Code of Conduct for Law Enforcement Officers (CCLEO) succinctly delineates their duties and its Article 8 enjoins them to refuse to do what is not prescribed by law. This is a doable. The backbone of police needs to be shored up. In the recent Unnao case of rape by an MLA and fabricated and coercive recovery of a weapon from the father of the victim or the recent case of arrest, handcuffing and incarceration of a 76 year old army veteran at the behest of an ADM, are cases in point. Policemen invariably look over their shoulder for instructions from superiors, politicians and even the courts for doing or not doing a correct thing. The iron frame of the Constitution – the bureaucracy – the IAS and the IPS – seem to have crumbled and '*charans*' (courtiers) have the sway. The lower functionaries gleefully follow suit.

It has been said that there are two types of people; those who 'observe' laws and those who are driven by 'enforcement.' In our society 'observance' is cowardice and police have abdicated their duty to lawfully enforce laws. Enforcement against traffic violations, noise pollution, encroachments, touts in public utilities, defacement of public property, cow vigilantism, lynching et al are within police powers. Police look over their shoulders for courts to order them to enforce the laws. Whatever the merits of 'broken window syndrome' enforcement, ignoring minor law infringements leads to a sense of impunity and graduation to bigger crimes. Police must not ignore seemingly inconsequential deviant behaviour. This is doable. Catalysts like police elders, RTI activists, civil society, think tanks, retired bureaucrats, NGOs etc. need to create pressure groups to collectively raise voices and demand reforms.

Police as an organization lacks institutional hubris and, most of the time is apologetic. It lags in self-propagation and are awkward in the art of perception management. Police must respect media as a vehicle

for perception management, not as an adversary, to be kept on the right side. Confrontation with media is a losing proposition. Akbar Allahabadi: advised:

खींचो न कमानों को न तलवार निकालो,
जब तोप मुक़बिल हो तो अख़बार निकालो

Such is the power of media! Rushing to media and blowing own trumpet without solid base can blow back in the face. Police, as an organization, essentially needs a professionally managed effort to project image and contain damage. Police needs to invest heavily in this area. This is a doable.

One important area of concern is adverse police-population ratio. UN standard suggested ratio is 220:1lac and Indian average is 137:1lac. Successive cadre reviews fatten armed police and the nerve centre of law and order mechanism – the Thana – remains skeletal. Heavy workload pressure, accountability stress, denial of rest, hounding by media etc., tell upon a policeman's mental and physical health and effectiveness. I recall that a delegation of ARSIPSO (Association of Retired Senior IPS Officers), called on the then President Abdul Kalam to apprise him of the travails of police. He allowed us to let off our steam, and then quietly asked if we had looked into the plight of a traffic policeman on duty facing sun, heat, rain, cold, fumes and maddening traffic? Were we doing something to alleviate his difficulties? Were we! The President was concerned about a lowly policeman and we were worrying about police reforms and parity with bureaucrats! Can police not manage 8 hour shifts, weekly offs, schooling for children, insurance, medical and sanitation facilities for them?

Manpower wastage – adverse teeth-to-tail ratio – is a serious concern. When Babri Masjid fell on 6th December 1992, I ordered a bugle fall-in call to all available men in Bhopal town for emergency deployment. Of over 2000 men posted outside of Police Stations, only 3 men ambled in and there were 1997 excuses!!! Paucity of manpower is an excuse. Police do not manage, economise or audit manpower; evolve, practice and institutionalize standard drills but seek outside resources to manage law and order. Civil police is not trained or equipped for fighting militancy or organised crime is the standard excuse. Why then most of policemen are armed with semi-automatics or Kalashnikovs? Many States like AP, Maharashtra, J&K etc. have created home-grown SWAT groups for operations and coped with. Expertise can and must be developed and institutionalized within the resources of

the organization to tackle militancy, criminal investigation, maintenance of law and order etc. Unusual delays in obtaining expert opinion in medico legal cases, cyber crimes, forensics, DNA testing, biometric analysis, unravelling frauds, cheating and forgeries, psychological profiling etc. are other concerns that need in-house capacity building and financial resources. The recent probes into alleged misdeeds of Rohini FSL remind us that vigilance is a 'command function.'

Two thirds of police consists of constabulary, who hardly have any training-specialised or in-service, and lack equipment, powers of arrest and investigation. Now that well educated men are joining as constables, it is high time we statutorily empower them for higher responsibilities. Going to basics of policing has to be the prime objective of reforms from within.

Separation of powers is immanent to federal structure. The judiciary, however is increasingly usurping executive's space because the latter has abdicated its basic responsibilities. All citizens have the right of private defence but the police too, in special situations, have extra powers under the Cr. PC, Police Act etc. To protect bonafide transgressions, provisions exist in sections 197 and 132 (2) & (b) Cr.PC. Police have bounden moral duty to protect its men against vexatious complaints. Orders of court for registration of FIR into Tuticorin firing, under the garb of judicial review of executive's actions, is harassingly demoralizing. The petition of army veterans that CBI inquiry into alleged extra-judicial killings in Assam and Manipur, where AFSPA is in force, will hamper fight against militancy in disturbed areas. Given that impunity can never be general but laws must take into consideration the prevailing situation. Police administration and investigating agencies must be protected against the quixotic dictates of courts, or politicians to police to solve cases and arrest culprits *pronto*. Obviously the police will be in a rush to produce results – justified or not. Police Supervisory officers must shield juniors against such dictates and pressures exerted by vested interests. Sadly we do policing under the 'superintendence by state' and not "policing by consent." Though civil society, activists and NGOs play crucial role in making police accountable and transparent, police itself must enlist their protection and support by reducing the trust deficit with them.

Human Rights violations is an emotive issue and potent weapon for police bashing. Powerful nations have used subterfuges by redefining torture or inventing excuses like 'coercive interrogation' to justify torture and human rights violations in order to control organised crime and

militancy. The Landau Commission (1987) justified the principle of 'lesser of the two evils,' Patriots Act, 'renditions' of Iraqi prisoners by the US to Yemen , POTA, TADA (both repealed), AFSPA, sections 132 (2) (b) Cr. PC provide escape windows to law enforcement agencies against their actions. These extreme measures outside the ambit of normal laws, may give a sense of impunity to Law Enforcement Agencies (LEA). Saturated reminders to LEA by police leaders. that respecting the dignity of man should be their primary focus. Police leaders must demonstrate that the excuse of 'fuhrerprinzip,' unquestioned submissiveness to authority and non-adherence to the UN CCLEO to 'prevent and vigorously oppose' (Art 8) any violation of the Code, is ethically and morally wrong. The need to look inward and putting our own house in order instead of waiting for statutory reforms to come from above, cannot be overemphasized.

आकाश कोसने से कोई फायदा नहीं,
बेहतर है नुक्स देख लूं अपनी उड़ान

Police Reforms - Need for a Multiprong Strategy

Meeran Chadha Borwankar*

Seventy plus years into independence, the country is burdened with a police force that neither citizens nor the establishment itself trust. The fact that most Chief Ministers would like to keep the Home portfolio that supervises police, with themselves shows its importance not for maintaining law and order or to investigate but to 'use' it and to settle scores with opponents. Reducing the police into mere puppets has suited all political parties to the serious disadvantage of citizens in India. Having a professionally competent and ethically strong police does not suit them because they will not be able to 'use' it. As for the citizens, the need is for police that is polite, professional, well equipped, responds in time and in the manner that the situation demands. In short, it should be an organization they can trust especially as they approach the police only at times of need and emergency expecting quick and empathetic response. It is pertinent that only 47 per cent and 59 per cent of citizens in Bengaluru and Delhi studied by IDFC Institute feel that police will treat them respectfully when approached.¹

If one goes through the website of any state police, one would find 20 to 25 per cent vacancies. Funds for training them are inadequate and equipment obsolete. Police are the 'have nots' of the government machinery. Because they have no voice, being debarred from forming unions, they are also the most exploited. A police officer on an average works for 12-14 hours in every State of the country and for 365 days a year. Therefore, an over worked, ill equipped, undertrained police is

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in an urgent need of reforms. It also needs to be freed from the clutches of short sighted, self-centered politicians. Police in India needs to be reoriented to the rule of law and due procedure of law that it has sadly diverted from. It has to be made citizen centric instead of politician centric that it has become all over the country.

Using police machinery for the benefit of the party in power is so well entrenched now that every political party waits for its turn to do so with no inclination to reform the police. Superficial efforts, formation of committees and commissions are the order of the day, as can be seen from the most unsatisfactory compliance to far reaching directions of the Supreme Court of India in *Prakash Singh v. Union of India* case.² These deal with the functional autonomy and accountability of the police. If implemented in the spirit with which the apex court painstakingly gave the directions, it would not only make the police more efficient but also citizen friendly as the whole system would be streamlined with limited role for the political party in power.

One of the first directions of the apex court is that the State governments should constitute State Security Commissions to lay down broad policy guidelines and evaluate the performance of the State police and that political party in power does not exercise undue pressure on it. The bitter truth is that the party in power appoints 'their own men' in all crucial posts from officers in charge of a Police Station to the superintendent of police. Instead of confining themselves to policy making, they meddle with the daily affairs of policing on regular basis. It is pertinent that the State of Maharashtra has the Anti-Corruption Bureau without a Director General for more than two years now. Establishment is scared of police officers with spine, so keeping the post vacant and 'using' officers below the DG with a carrot dangling for them to aspire for coveted postings has become a norm. Such deviance shall be checked with formation of State Security Commission.

Second that the Director General of Police in States are appointed through a merit based, transparent process and has a minimum tenure of two years. This will ensure competent, fearless leaders at the top who can improve service delivery to citizens, attend to the training of police and make them professionally competent. Many States do not appoint a Director General of Police but give temporary charge to a DG rank officer, again just to be able to remove him/her if found inconvenient.

Third direction is about minimum tenure for other police functionaries. The State government is to ensure that field police officers such as the district police chiefs or officers in-charge of police station also have a minimum tenure of two years. This shall ensure stability and implementation of strategies that a leader envisions. In some states like Haryana and Uttar Pradesh, the tenures of these chiefs are notoriously short with no continuity and high level of political interference. Officers wait for the approval of the local leaders before initiating any action as in most cases they get postings only at the behest of these very leaders. The recent gang rape involving Kuldeep Singh Sengar, a Bhartiya Janata Party Member of the Legislative Assembly from Uttar Pradesh and three policemen who wrongly framed the father of the victim shows how deep the police-politician nexus has grown.

The fourth direction is about constituting Police Establishment Boards in States which will decide transfers, postings, promotions and other service related matters of police officers. This will ensure that police officers are not at the mercy of politicians.

The Supreme Court has also directed the Union government to set up a National Security Commission for selection of Heads of the Central Police Organisations (CPO) with fixed tenure.

Constitution of boards with persons of eminence, retired judges of High Court/Supreme court, members of opposition, 'LokAyuktas' etc. can be worked out by each State individually or on the basis of recommendations of the Ribeiro Committee. The idea being merit and professional capabilities, of police officials should be the criteria for postings instead of patronage as it is today. These directions are to ensure that police are made functionally autonomous and to reduce political interference that has made police unprofessional.

Sixth direction is about creation of Police Complaints Authority at the State and District levels. They are expected to look into public complaints against police officers and deter them from misuse of their legal powers. This will make them accountable and faulty investigation like the infamous ISRO case or police complicity in Anti Sikh riots of Delhi can be avoided in future. It will also encourage citizens to report non-registration of their complaints by police that has been noticed all over the country. In the IDFC study of four metros only 16 per cent victims in Delhi and 19 per cent victims of crime in Mumbai said that FIRS were registered on the basis of their complaints.

The seventh and the most important recommendation is about separation of investigation and law and order police. An over burdened police force is neither able to do justice to investigation nor to serious issues of law and order. Specializing in either of the two streams will improve their performance. It will also lead to focused training in their selected field and enable them to concentrate on it. Citizens shall be the ultimate beneficiaries.

The States have given lukewarm response to the Supreme Court directions with many challenging their validity on different grounds like impracticability, curtailment of the role of public representatives, demoralizing the police etc. Many States have neither adopted the Model Police Act drafted by Soli Sorabjee Committee nor framed their own Act replacing the archaic 1861 Police Act.

Police is a State subject. Besides the above seven directions of the Supreme Court, there are many reforms possible at State levels or by the police leaders themselves e.g. States must be encouraged to fill vacancies in police as it reduces the police efficiency. They are neither able to do justice to investigation nor respond to emergencies. As on 1.1.2017, the country had 21.8 per cent vacancies in police.³ The result is that on paper we have 193 police persons per one lakh population but actually end up having only 151 per lakh due to high number of vacancies.

Another major reform that needs urgent attention is strict implementation of eight hours duty shift. It should be the norm as in case of all other government departments. Being constantly overworked, police performance naturally suffers and they tend to be curt and rude to citizens. Their inter personal relations and their personal lives also get adversely affected. Constantly overworked police officers lose their sensitivity and fail to empathize with a citizen in need. This has been the fore most drawback of Indian police i.e. its poor interaction with the community. 48 per cent of Delhi and 45 per cent of Mumbai victims of crime who interacted with police said they were not satisfied with their interaction.⁴ Some of the reasons were not registering their complaints, making them wait for long, not listening, late response, asking for money etc. Corruption and non-registration of cases are rampant all over the country. Constituting Police Complaint Authority may address both the issues provided citizens have confidence in them.

As for infrastructure and equipment the sorry state of affairs can be judged from the fact that in the state of Uttar Pradesh there are 3.8

vehicles per 100 police persons.⁵ This definitely affects the police response time both to the scene of crime and law and order issues. More investment in infrastructure and information technology for police can speed up its response, investigation, court and prison related work. Crime and Criminal Tracking Network System (CCTNS) if implemented properly can connect all police stations in the country, while e-courts and e-prisons can bring all four wings of criminal justice system on the same page, making each of them efficient e.g. if police serves summons to a person and courts, prosecutors immediately see the same on the network, they can be ready with the case on a given date. Today many cases kept for hearing are adjourned at the last minute when police reports that summon/warrants could not be served/executed. It is wastage of time and an avoidable financial loss to the exchequer. CCTNS has taken long to be implemented and e-courts and e-prisons are at the nascent stage. Besides financial investment, technological reforms for police need induction/recruitment of qualified experts too. Despite a period of about ten years CCTNS has not reached all police stations⁶ and it is yet to show concrete results. IT related police reforms thus need diligent follow up.

Strong basic training with frequent in-service training inputs must form part of police reforms. Indian police need skill upgradation as well as training to facilitate attitudinal changes. As on 1.12.17 States on an average had spent 3.56 per cent of their annual budget on police and only 1.03 per cent of the police budgets of State police was spent on training.⁷ Law and Science are constantly evolving and police officers need both for providing good quality investigation to the community and for responding to conflicts of various kinds. An ill-trained police force can not respond to highly technical cyber-crime that has plagued citizens as well as financial institutions like the recent case of Cosmos Bank in Maharashtra. Therefore, police reforms must include regular and good quality training for police officers of all ranks especially the constabulary that is the first contact point for citizens and first responder to any situation.

Another major reform is induction of more women in police to cater to the needs of half the population of the country. A total of 3,27,394 cases of women (both under various sections of IPC and SLL) were reported in the country during the year 2015.⁸ These being the latest figures provided by the National Crime Records Bureau (NCRB). There were 140184 women police on 1.1. 2017 as per the

Bureau of Police Research and Development (BPRD) thus making them 7.28 per cent of the total police force in the country.⁹ Compared to India, there are 29 per cent women in Sweden Police, 27 per cent in United Kingdom and 20 per cent in Canada.¹⁰ Not only do we need more women but also mainstream them, so that they can investigate serious crime and also attend to issues of conflicts with confidence and aplomb. Commonwealth Human Rights Initiative (CHRI) in its report of 2015 has recommended “Enhance the visibility of women by increasing the number of women police personnel in police patrols/ PCR vans, beat duties, traffic duties and other public interface duties involving interaction with the general public, and not just women and children. This allocation should be aligned with greater recruitment of women with specific planning and deployment to place them in such frontline duties.”¹¹

Another area that needs urgent attention is forensic back up for police and to invest in the same. While equipment in the forensic labs is obsolete, vacancy position in most States is alarming. New fields like cyber forensic, DNA analysis, voice and data analysis cannot be handled by the old experts. New branches and units have to be created and competent experts engaged to cater to the modern-day crime. The issue of pendency of samples in forensic laboratories is acute and has been a major cause of delay in police submitting charge sheets to the court and subsequently for trials.

The last important reform that can be a game changer is to form close alliance between police and academia. Colleges and universities working closely with police shall enrich each other. There would be a surge in research related to policing and the feedback from such academic projects shall lead to the improvement in overall performance of police. Besides the academia, close partnership with community too is necessary to improve the police. Many States like Andhra Pradesh, Maharashtra, Punjab, Madhya Pradesh etc. have introduced schemes for police-public partnerships but most projects are without financial backing and thus do not last. Community policing and partnership with academia require funds to sustain them and are long-term investments with high dividends.

To conclude there are some major police reforms that the Supreme Court of India has initiated and is monitoring. But there are certain reforms that can be carried out by the Police leadership itself. Policing has been neglected for too long and to re-orient it to work in consonance

with the constitution of India, a multipronged strategy of reforms at different levels is essential. Well being of the community and trust of the citizens of the country are at stake, time being the essence.

Notes

- ¹ Safety Trends and Reporting of Crime (SATARC) by Avanti Durani, Rithika Kumar, Renuka Sane, Neha Sinha IDFC Institute
- ² <http://www.supremecourtcases.com>
- ³ 'Data on Police Organization' by the Bureau of Police Research and Development (BPR&D)
- ⁴ Safety Trends and Reporting of Crime (SATARC) by Avanti Durani, Rithika Kumar, Renuka Sane, Neha Sinha IDFC Institute
- ⁵ Ibid
- ⁶ Crime and Criminal Tracking Network & Systems (CCTNS) <http://ncrb.gov.in/BureauDivisions/cctnsnew/index.html>
- ⁷ Ibid
- ⁸ Crime in India, National Crime Records Bureau Publication
- ⁹ 'Data on Police Organization' by the Bureau of Police Research and Development.
- ¹⁰ <https://www.statista.com/statistics/436353/share-of-female-police-officers-for-selected-countries/>
- ¹¹ 'Rough Roads To Equality, Women Police in South Asia | 2015' By Commonwealth Human Rights Initiative

Police Reforms

S.C. Tripathi*

Under the Constitution, law and order including police is a State subject. Most States still retain the features of Indian Police Act 1861. Common Cause (CC) in collaboration with Centre for Developing Societies (CDS) and taking inputs from National Crime Record Bureau (NCRB) and Bureau of Police Research and Development (BPRD), has published a recent study “Status of Policing in India Report 2018, A Study of Performance and Perceptions.”

Common Cause study has collected data relating to 43 variables collected over five years from 2012 to 2016 and categorised into six different themes, namely, (1) Crime rates, (2) Disposal of cases by Police and Courts, (3) Police Diversity, (4) Police Infrastructure, (5) Prison Data, and (6) Disposal of cases of crime against SC/ST, Women and Children. Some of the results are surprising but others strengthen common perception.

Punjab, Himachal, Jharkhand and Tamilnadu have the least crime rates and MP, Rajasthan, Kerala and Delhi, the most. In percentage of violent crimes, the table changes. In disposal of cases by Police (charge sheet filed), and by Courts (conviction and other disposal), the index shows Uttarakhand, Chhattisgarh, UP and Kerala to be good performers, with Bihar, West Bengal, Delhi and Assam worst performers. The police diversity index is best in Odisha, Maharashtra, Himachal and Tamilnadu, but worst in Assam, Haryana, West Bengal and UP. Police Infrastructure is best in Delhi, Nagaland, Rajasthan and Punjab, but worst in West Bengal, Gujarat, UP and Andhra. On overall basis, more than 50 per cent of the prisoners are under trial and Himachal, MP, Kerala and Chhattisgarh are the worst performers in prison data index.

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In disposal of cases of crime against SC/ST, Women and Children, Andhra, Assam and Bihar are the worst, whereas Uttarakhand, West Bengal and Delhi are the best.

Analysis of recorded data may not give the best picture as putting everything into figures is readily or easily not possible. Not capturing many unreported/ under reported crimes and reducing all crime to digits can potentially lead to somewhat distorted picture. But Common Cause study does give a countrywide picture and reflects the actual position in respect of physical features like infrastructure etc. In case of other issues, it creates a base for further study and analysis. There are interesting observations about who all mostly contacted police and whom did police mostly contact. Not surprising that mostly well to do persons contacted police but police contacting poor was twice as much as the rich. Police is even now a feared entity and the perception about it is still of discriminating on caste and gender with some findings on religion based discrimination. Very few States have adequate representation in the force of SC/ST, women or minorities. Interestingly, the underutilisation of funds is very high in Bihar, UP and Assam, showing poor administration.

So the police force or our perceptions or both are not changing. I was district magistrate of Almora about 44 years ago and worked as Inspector General for Revenue Police as the Patwari functioned as Station House Officer (SHO) of a Police Station (PS). We wanted to expand the coverage of regular police then confined only to three PS. But people were apprehensive and did not want it. Some went to the extent of saying that police in these peaceful areas would bring crime if not criminals.

Central and State governments have looked at Police Reforms many times with several Commissions. Dharamvir Commission set up by Janata government gave a comprehensive report but the Congress government that followed was luke warm towards it. Sri Prakash Singh filed a PIL in Supreme Court (SC) that gave several directions and keeps monitoring from time to time. But the States have not implemented in the spirit of reforms and mostly given very lukewarm response. In a recent follow up direction, the SC asked to involve the Union Public Service Commission (UPSC) in the selection of State Director Generals of Police. But the malaise appears deep with over politicisation where junior officers influence the posting of superiors and lack of professionalism pervading the organisation.

I am no expert on police matters, but I have the benefit of working as a Magistrate dealing with all kinds of criminal cases under the old Cr PC. I also had the opportunity of working at the apex supervisory level for revenue police and then as District Magistrate of an extremely sensitive district of Aligarh. At State level I did not work directly in home department but was oversaw the working from close quarters during the President Rule in UP, working as Principal Secretary and Adviser to Governor.

Most important unit in police establishment is the police station (PS) and SHO is the most important functionary. Police stations must be modernised, instead of head moharir (clerk) we should have computer operators writing First Information Reports (FIR) and the General Diary (GD). All Sub Inspectors, Inspectors and SHO must be graduates with minimum one year entry level training in crime prevention, detection and prosecution besides use of fire arms. There should be compulsory 3 to 6 months, in-service training in above subjects every five years. Every police station must have a specialised cell of trained inspectors for crime detection and investigation. The constables and head constable would only do beat and watchward or law and order duties and assist superiors in other activities. It is worth mentioning that every PS should have at least one woman and one SC/ST sub inspector. The minority sensitive districts should have representation of official from those communities. No person lower than a sub inspector be now authorised to make arrest in normal course. The constable and head constables can make arrest only if they see a crime taking place.

All police stations in cities should be headed by Asstt or Deputy Superintendent of Police who should make sure that every citizen feels comfortable meeting a policeman or coming to a police station. Investigation and prosecution have to be strengthened. At district level a specially trained officer of the level of Superintendent should supervise investigation and prosecution teams at every police station. Police establishments have many supervisors but few and untrained actual workers. This must change. Investigation and prosecution must be specialised and separated from other duties right from PS to district level. The people engaged in crime detection, investigation and prosecution should not be sent for general law and order or protocol duties for which the district in charge should train and deploy home guards and NCC cadets. The link between investigating officer, prosecution officer and the government pleaders must be strengthened.

Then only we can see reduction in number of undertrials and better percentage of convictions. Prosecution Officers must ensure that the witness presented are examined on the days presented and are not asked to come again and again apart from other harassments.

Another area crying for reforms is the security apparatus. Thousands of policemen are deployed for security of persons and non-sensitive establishments. Personal security must be cut down. At the most one policeman to liaise and communicate with local police can be in the personal security of a VIP, rest can all be recently retired servicemen reemployed for the purpose after a specific training. There is no police work of crime control or investigation as such, required in personal or establishment security. This will improve security, cost less and release large number of policemen for regular work.

Lastly comes the question about control of police. In all democracies, the head of force is accountable to the elected head. In some countries, the local police is under the control of the Sheriff or the Mayor. In India the political interference is high even when the police is not under the control of local elected functionary and this model is unlikely to work. Unless and until police force becomes absolutely professional and work strictly according to law, this model cannot be attempted. The new CrPC has almost removed the role of executive magistrate who were the buffer between police and common man on one side and police and judiciary on the other. Now the judicial magistrates are supposed to oversee the investigation and prosecution but they're not accountable to the public or the government. It would therefore be necessary to bring in the District Magistrate as coordinator to whom the prosecution reports and police seeks guidance in law and other matters. The practice of monthly coordination meetings between, District Magistrate, District Judge and district in charge of police need to be revived with the District Magistrate as convenor. At sub-district level open meetings with sub-divisional magistrate, police officers and public representatives may also be considered.

A most neglected but important area in the criminal justice system is the medicolegal matters. The current state of mortuaries is pathetic. Dead bodies rot there and only a few sweepers seem to be in charge. There is requirement of proper cooling system and deployment of medical and paramedical staff duly accountable for work. A number of cases fail in the court due to indifferent work in post-mortem and

related matters. If need be the management of mortuaries may be given to established NGOs like Rotary or business and medical associations.

As mentioned earlier, the most important unit in police establishment is the police station. We need to strengthen, modernise and professionalise this unit. The sub-district and district units are to supervise and give technical support. Presently a large number of supervisory functionaries like DIG, IG and Addl. DG/ Spl DG have come about. Some of them can be cut down and personnel management should be left to DIG for police station level and DGP for district level functionaries. The Supreme Court has directed fixed tenures to the Director General, he should ensure the same for district and police station functionaries. The State Minister incharge through the Home Secretary should work out and enforce accountability and responsiveness in the force at every level. They should also ensure necessary restructuring in the organisation, proper training, modernisation and infrastructure support at all levels.

In Search of the Perfect Cop: The Philosophy Behind Community Policing

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Abstract

Community Policing (CP) is a new philosophy of police administration which believes that creative solutions for various problems can be sought and quality of life in the community can be improved only by working together via police-community interaction. Mainstream CP literature starts with a basic observation which informs every theory throughout maintaining that in a democratic State run by the people we must understand how common people conceive the nature of crime and role of the police. A cursory review of literature reveals that in spite of its success, there is no scientific, logical, predictable, refutable theory explaining and explicating, predicting and refuting CP practices. The present paper is an attempt to do so and would analyse various theoretical constructs that support and strengthen the basic ideas relating to disorganisation and social control, democratic policing, public order management and different methods and styles of community policing.

(Key Words: Community Policing, Democracy, Crime Control, Participatory Democratic System, Social Structure, Communitarianism)

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Police in Contemporary Societies: Social Structural Implications

Robert R. Friedmann in his book *Community Policing: Comparative Perspectives and Prospects* maintains that from the perspectives of both community and police, community policing signifies that crime is produced by societal factors over which police have relatively little control and therefore crime control needs to focus on those societal factors which cause crime and should focus more on 'quality of life' issues that exceed crime. Fear of crime also needs to be attended to in attention to 'traditional' crime issues (2003: 3).

Well known legal anthropologists have contributed much, through their studies of 'trouble cases,' to our understanding of how indigenous people of different cultures settle disputes and deal with problems. Such research informs that the problems of everyday life look and feel very differently from the inside than from outside. The lesson to be drawn from such studies is that legal classifications of a personal encounter, e.g., murder or rape, do not usually capture the true nature and felt impact of such an encounter, as experienced by the person involved. Problems as experiences are anchored within a constellation of personal relationships, shaped by a multiplicity of social factors, circumscribed by intersecting norms (moral, custom, and ethics) and moved along by situational dynamics and personal interactions. Simply, as experience, no crimes are alike.

Further, social life is governed by certain normative behaviour that is shaped by an understanding of what is acceptable and what is not acceptable to do in a society. Laws are simply the formalization of social norms without which societies cannot exist. According to Friedmann, the criminalisation or decriminalisation of an act reflects society's reaction to it and what societies will or will not tolerate. It specifies who the victim is, who the offender is, what the offence is, under what circumstances it was committed, where it was committed and what will be the penalty against it. However, the leap, or transition, from informal social norms to formal laws is not clear and while from a legal standpoint deviant behaviour is to be treated as criminal only when it violates a given law, it is also important to understand that at least some amount of such deviant behaviour could be handled on an informal level as well to alleviate a conflict before it becomes an official crime. Here underlies the significance of community policing (2003: 6).

The accepted view today, is that crime and delinquency should be viewed not merely as an infraction of law, but more appropriately, as an anti-social conduct, arising from disorientational developments in the individual and disorganizational process of the society itself. Social factors like population explosion, inadequate economic growth, and inequitable distribution of opportunities, side by side unplanned industrialisation and urbanisation, super imposed on ignorance and poverty, have all contributed to higher levels of disorder in the society.

Social order is a core theoretical issue in the social sciences. The most important theory of social order emanates from Aristotle and is echoed by Rousseau, Durkheim, Parsons, and their contemporary fellows. It views the ultimate source of social order as residing not in external controls but in compliance of specific values and norms that individuals have somehow managed to internalize. As per this theoretical tradition, the attainment of order is generally not considered to be problematic in socially and culturally homogeneous societies. In heterogeneous societies community policing programmes should aim at attaining local order by cooperating and convincing various local social groups to exercise informal social control among themselves for their own benefit.

According to Robert Lombardo and Todd Lough (2007: 122), two theoretical constructs underlie most of the community policing programmes. They are 'Broken Windows' theory and the 'Community Implant' hypothesis. Both the theories are grounded in social disorganisation theory and both argue that there is a direct relationship between distressed communities and crime. The social disorganisation theory further argues that there exists a direct relationship between higher rates of deviance and the increased complexities of urban life. Julius Wilson (1987), after studying the city of Chicago, argued that the de-industrialisation of American society has led to the establishment of a new set of structural constraints that has continued to fuel social disorganisation. As such it can be rightly said that communities suffering from increased unemployment, poor educational opportunities, and residential immobility also lack the social organisation needed to control delinquent and criminal behaviour. In such communities, the process of community policing becomes difficult.

'Broken Windows theory' introduced by James Q. Wilson and George L. Kelling (American criminologists) in 1982 is based on the assumption that disorder and crime are linked in a developmental

sequence. If a window in a building is broken and left unrepaired, all the rest of the windows will soon be broken as well. Since the unrepaired window is a signal that no one cares and so breaking more windows will not result in any official sanction. This type of vandalism can occur anywhere once the sense of mutual regard and the obligations of civility are lowered by actions that seem to signal a lack of common concern. Wilson and Kelling argue that neighbourhoods where property is abandoned, weeds grow, windows are broken, and adults stop scolding ill-disciplined children cause families to move out and unattached adults to move in. In response, people begin to use the streets less, causing the area to become vulnerable to criminal invasion. The withdrawal of the community leads to increased drug sales, prostitution, and mugging. 'Broken Windows' theory has been a driving force in community policing programmes, because of the belief that unattended behaviour leads to the breakdown of community controls, thus leading to crime.

However, several researchers and criminologists have challenged the 'Broken Windows' theory. Taylor in his book entitled *Breaking Away from Broken Windows* (2001) made an attempt to determine origin of civilities and to find out whether or not they eroded urban life over time. He maintained that zero-tolerance, order maintaining police strategies, aimed at reducing fear of crime, may be misdirected and should not be adopted axiomatically. Similarly, Sampson and Raudenbush (1999) maintain that the cause of crime is structural disadvantage and weak collective efficacy: the ability of a community to regulate its own conduct (Lombardo and Lough 2007: 124-126).

Community Implant hypothesis is based on the assumption that the main reason for high levels of crime is the lack of informal social control in community areas. Sociologists argue that informal social control can be implanted in a community by collective citizen action in neighbourhoods where social control is naturally weak or non-existent. The term Community Implant hypothesis was first used by Rosenbaum (1987) in his essay entitled *Theory and Research behind Neighborhood Watch*. Mastrofski, Worden and Snipes (1995) have described this hypothesis as 'Community building.' Community building, according to them, is a process by which police strengthen the capacity and resolve of citizens to resist crime by building positive relationships with community residents. Lyons (1999), in his book *The Politics of Community Policing*, argues that innovative police strategies such as educational, recreational and occupational opportunities for youth, can

mobilize the informal mechanisms of social control embedded within the community life (Lombardo and Lough 2007: 128).

Social control generally refers to the capacity of a particular group/ community to regulate its members. It involves the use of rewards and punishments. Formal social control is always derived from certain written rules and laws and is enforced by the Courts and the police. On the other hand, informal social control is based on customs and norms and is enforced by the citizens themselves through behaviours such as surveillance, verbal reprimand, warning, rejection, and other emotional pressures to ensure conformity.

The question for community policing then becomes whether the police, working with the community, can implement informal social control in socially disorganised communities.

Social defence programmes of the police adopt a dynamic approach for improving the standards of education, employment, health and living conditions, and all this would generally enhance the quality of life of the ordinary people and will automatically lead to resolutions of tensions and reconciliation of conflicts.

Community policing has the capacity to solve the problems of deviant behaviour in a disorganised society by handling the problem at the beginning stage itself with appropriate community-based programmes, fully involving the community groups at various stages of decision making, planning and implementation of the programmes for the protection of the community. These programmes can subsequently become the base for all neighbourhood community police projects with the involvement of the community members in community's own organisation, collective anti-crime activities, neighbourhood social integration, local social control and overcoming fear of crime. Such community based programmes in turn result in the promotion of mutual understanding and appreciation among the community members.

In spite of the popularity of programmes that utilized the community-building approach, there is little empirical evidence to support the effectiveness of the community implant hypothesis. The study conducted by Skogan (1990) concluded that informal social control mechanisms do not increase solidarity or social interaction. However, research by Silver and Miller (2004), found that community attachment and satisfaction with the police (on the basis of which community policing operates) contribute significantly to neighbourhood levels of informal social control. The Social Structural theory of CP holds that

community cooperation in the form of informal social control can result in successful community policing since increased satisfaction with the police is indeed one of the fundamental goals of community policing.

Policing, Security and Democracy

Community policing is based on the democratic principle that “anyone who exercises authority on behalf of the community (like the police) is accountable to the community for the exercise of that authority.” Democratic theory of community policing rests on the belief that community policing, which is the newest development in the area of policing, involves the empowerment of a new level of social organisation to generate work for the police, namely, groups, neighbourhoods, communities, businesses, civic groups, and so forth. The theory also maintains that the success of a democratic government depends, in large measure, on the voluntary compliance of citizens with society’s laws and norms of conduct.

Police in a democracy are always in a dilemma, for in a free society there exists a delicate balance between enforcing laws and maintaining order effectively on one hand and being repressive on the other.

Community policing in a democratic society has the following roles to perform:

Acts as a democratic role model for citizens in society by being impartial, fair, and objective, showing restraint, compassion, and tolerance.

- Practices consistent enforcement of the laws.
- Investigates crimes and apprehends suspected criminals.
- Educates the public to protect themselves and their property.
- Attempts management of interpersonal and inter-group conflicts with minimum reliance on force.
- Works with other community and criminal justice agencies to alter the causes of crime and to cope effectively with its occurrence (Kuykendall and Unsinger 1979: 19).

According to Prof. David Bayley (2005: 298-300), the essential features of democratic policing are responsiveness and accountability. A democratic police force, according to him, is the one that responds to the needs of individuals and private groups as well as the needs of the government. Strengthening of these mechanisms will strengthen the

quality of democratic policing. The police, in truly democratic countries, according to Bayley, serve the disaggregate members of the public and their needs are uppermost in the mind of a democratic police force. He, however, maintains that the problem that most of the countries face is that democratic policing, especially in its concern with human rights and accountability, is under attack all the time because of reported increases, firstly, in serious crime and, secondly, in terrorism, assassination, and collective disorder. When there are increases in individual as well as collective threats to law and order, democratic policing becomes vulnerable to being labeled a “soft strategy.”

The democratic theory of CP also derives its ideas from the model of deliberative democracy. Deliberative democracy signifies a democratic system that deliberates to the extent ‘that the decisions it reaches, reflect open discussion among the participants, with the people ready to listen to the views and consider the interest of others, and modify their own opinions accordingly.’ In deliberative democracy decisions are taken wholly by consensus. Community policing is also based on a similar belief that members of a community can lead a peaceful and orderly life only if they directly participate in the community policing activities. The democratic theory of community policing assumes that the regular police force is just a skeleton for the true policing efforts of a democracy wherein every citizen is a policeman of his country.

One important element in defining a democratic society is a police force that:

1. Is subject to the rule of law embodying values respectful of human dignity, rather than the wishes of a powerful leader or party.
2. Can intervene in the life of citizens only under limited and carefully controlled circumstances and
3. Is publicly accountable.

Involvement of public in police activities, which is an essential prerequisite for CP, breeds a sense of belongingness. Periodic meetings between the public and the police at various levels serve the purpose. It brings police and the public closer. The sense of participation in policing helps the public to appreciate the problems of the police and policing. It encourages citizens to partake in nation building and boosts patriotism.

The theory also focuses on the continual tension between the desire for order and the desire for liberty that exists in every democratic

society. The theory maintains that both are essential. While as the case of the *Police State*¹ suggest, one can have the former without the latter, it is not possible to have a society with liberty which does not also have a minimum degree of order. The balance between these, however, will vary depending on the context and time period. Democratic theory of CP seeks to avoid the extremes of either anarchy or repression.

According to this theory, community policing is an explicit effort to create a more democratic police force. This involves some sticky issues such as:

- What constitutes a community? There is always a danger of powerful groups pursuing their own agendas and labeling this for the 'community' ignoring the basic principles of democracy and the legitimate needs and interests of minorities.
- How to resolve the tensions between professionalism/expertise and democratic participation and the danger of police being captured by a given segment of a diverse community.

It is ironic that police are both a major support and a major threat to a democratic society. When police operate under the rule of law they may protect democracy by their example of respect for the law and by suppressing crime. But apart from the rule of law and public accountability, the police power to use force, engage in summary punishment, use covert surveillance, and to stop, search and arrest citizens, can be used to support dictatorial regimes, powerful vested interest groups and practices.

The challenge of policing a democratic society is to design a means by which public preferences are converted into policing outputs. This is less easy than it sounds, for reasons well known to democratic theorists. Moreover, it may not always be desirable. Foremost among the concerns is the fundamental risk of majority tyranny. The public may well prefer solutions that are exclusionary, or indeed, draconian, to the great disadvantage of the marginalised minorities against whom they are directed. Compounding this is the fact that people from disadvantaged backgrounds are less likely to participate in any policing process, even those through which they might further their own interests. The flip side of this is the risk of minority tyranny, where a shrill minority would prevail over an apathetic majority. Citizens are usually competent judges of their own interest, but less so of the interests of others or of the public in general. This contradiction between public and private interests and the threat of majority or minority tyranny in

a democracy poses a major challenge to the very basis of community policing.

Communitarian Perspective of Community-Police Relations

A relatively new concept that has begun to get the attention of academics and politicians alike and can be applied to the general notion of community involvement in problem solving i.e. community policing is “communitarianism.” The term was promulgated by prominent sociologist Amitai Etzioni and other academics who argued that we have gone too far toward extending rights to our citizens and not far enough in asking them to fulfil responsibilities to the community as a whole. They further maintain that there is a need to make people understand that they need to actively participate, not just give their opinions but instead give time, energy and money (Peak and Glensor 1996: 48).

The theory maintains that the basic ideas and principles underlying the concept of communitarianism can benefit CP initiatives to a very great extent. In its view, communitarianism is an attempt to nurture an underlying structure of “civil society” – sound families; caring neighbours; and the whole web of churches, Rotary clubs, block associations, and non-profit organisations that give individuals their moral compass and communities their strength. However, communitarian theory of CP believes that the deteriorating trend of the quality of community life because political representatives have done a bad job, they have not attended to what citizenship is all about.

Communitarianism or more precisely political communitarianism believes that rights come with responsibilities. Communitarianism stands for the protection of “common good” and community policing is also a communitarian “justice” programme that expands the role of the police from a constitutional job of protecting individual rights into a more progressive definition based on protecting the “common good.” Communitarian theory of CP maintains that the individuals are shaped by the communities to which they belong and thus owe them a debt of respect and consideration. And as such, they readily tend to cooperate with the law enforcement agencies which assure them of peace and order in their respective communities. The theory focuses mainly on two themes. The first asserts the responsibilities individuals have towards communities; the second proposes a presumed decline in community as

a crucial factor in rising crime rates and other social evils. Contemporary political communitarianism believes that up to a point social order and liberty are mutually sustaining and reinforcing, but that if either is enhanced beyond that point, they become antagonistic and adversarial (Hudson 2003: 80). This view can influence CP to a very great extent. CP also believes in cultivating processes and institutions that can bring about reintegrative shaming: inculcating a sense of shame for wrongdoing, but without excluding the wrong doer from the community.

On the whole, the present theory holds that community strategies along with policing strategies can result in positive and effective responses to local demands. More precisely it can be said that community is what control strategies are intended to restore, and community is simultaneously the resource by which control is to be effected.

Although this theory helps in understanding the reasons responsible for crime and anti-social behaviour and the benefits of community police collaboration yet critics argue that crime prevention schemes and community policing strategies include narrow range of interests. They maintain that although these schemes are labelled 'community' they generally mean a small number of sectional interests. Community safety schemes usually represent business, housing associations, residents' associations, local authorities and criminal justice agencies, as well as some officially recognised community associations. Precisely, the communitarian theory of CP can be criticised on the grounds that owners of private spaces come to control access to what were formerly public spaces.

Proactive Policing and People's Participation

The paper also explores the possibility of developing a participatory theory of community policing which strives to create opportunities for all members of a society to make meaningful contributions to decision-making, and seeks to broaden the range of people who have access to such opportunities. The study uses a model of participatory theory, thus blending the received theories of community policing, since the participatory theory forms the very basis of community policing. Other theories influence only a part of CP and hold good only under certain existing social and economic situations, as has been discussed at the end of each of these theories.

Participatory approach to CP has the advantage of demonstrating that “no citizen is a master of another” and that, in society, “all of us are equally dependent on our fellow citizens.” Jean Jacques Rousseau suggested that participation in decision-making increases feeling among individual citizens that they belong in their community. This feeling of cooperation and consensus is the building block of community policing. The model also holds that those who are affected by a decision, have a right to be involved in the decision-making process. It implies that the public’s contribution will influence the decision and may be regarded as a way of empowerment and as vital part of democratic governance (Hacker 1961: 327).

The Participatory Theory which gained popularity during the past few decades is mainly associated with the names of scholars like Jean Jacques Rousseau, Carole Pateman, C.B. Macpherson and N. Poulantaz. Participatory theorists try to assimilate and realise the ideals of direct democracy – responsive and active citizenry, participation and equality in the modern complex world of nation-states. However, C.B. Macpherson argues that a truly democratic society promotes powers of social cooperation and creativity rather than maximise aggregate satisfactions. He argues for transformation based upon a system combining competitive parties and institutions of direct democracy (Ramaswamy 2004: 405).

The participatory theory can be said to be based on the following principles, the ideas of which can also be found in the context of community policing. These principles are:

1. Democratisation of Parliaments, bureaucracies and political parties to make them more open and accountable. CP also rests on the belief that solutions to contemporary community problems demand freeing both people and the police to explore ways to address neighbourhood concerns.
2. Decentralisation of powers to ensure participation of people in the formulation of policies from bottom to top. CP also emphasizes on a decentralized personalised police service with the inclusion of private citizens.
3. Accountability of political leaders and administrators to the people whom they represent. CP also ensures greater police accountability to the public.
4. Direct participation of citizens in the regulation of the key institutions of society. The concept of CP also considers crime

control and public order management as truly participative functions, with the total involvement of the community.

5. Maintenance of an open institutional system to ensure the possibility of experimentation with political forms.

The new policing philosophy has also been preceded by lot of experimentation and innovation in order to provide a more scientific basis to the concept.

Participatory theory possesses several merits. In the first place, it focuses on the individual in the context of the overall society and cooperation with others. Secondly, it makes a bid to find out the means for achieving the ideal of self-rule. Thirdly, it makes suitable suggestions for remedying the ills of the existing societies. Finally, it helps to find out the limitations of the existing system and suggests changes to improve the socio-economic conditions of the people. On the whole it can be rightly said that the principles underlying participatory theory can facilitate an evaluation of the concept of community policing.

Conclusion

The philosophy behind CP can be well understood from the communitarian perspective of Jean Jacques Rousseau (Hacker 1961: 303), according to whom, if men are to live the good life, they must learn to live in a community. As such the entire notion of community and participation runs through the central theme of community policing which holds that the public should play a more active part in enhancing public safety.

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Notes

- ¹ The term police State refers to a State in which the government exercises rigid and repressive controls over the social, economic and political life of the population, especially by means of a secret police force, which operates above the normal constraints, found in a liberal democracy. A police State typically exhibits elements of totalitarian and social control, and there is usually little distinction between the law and the exercise of political power by the executive.

The Scientific and the Religious Mind

Ramesh Chandra Shah*

We are archetypal inwardly and phenomenal outwardly. Man is not called upon to deny any part of his nature, but to bring higher and lower, essence and nature into harmony.

— Anand. K. Coomarswamy

According to Vinoba Bhave — a great disciple of Gandhi and a scholar-thinker in his own right, the two forces that move human society are science and self-knowledge.¹ Self-knowledge here stands for all that is essential in religion and philosophy—esp, spiritually oriented philosophy, i.e. spiritually itself. By contrast, Science as Sri Aurobindo characterises it in his ‘Evolution,’ can be equated with world-knowledge. Now, this world-knowledge and that self-knowledge affect human destiny in two different ways. Science is calculative thinking that brings about outer changes; whereas self-knowledge, linked with meditative thinking concerns itself with inner transformation. But as J.N. Mohanty, one of the most incisive Indian philosophers rightly points out, this functional separation doesn’t mean functional bifurcation, because it is based on a dubious distinction between the outer and inner.² Science and technology do influence the human sensibility and, as for self-knowledge, it cannot leave man’s outer life unaffected. Aurobindo too rejects such a bifurcation. “The inward too” – according to him, “is not complete if the outward is left out of account;... to pursue an inner liberty and perpetuate an outer slavery was also an anomaly that had to be exploded.”³

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Evidently, we can no longer afford to ignore the relations between these two great endeavours of the human race to make sense of life and the world. One is reminded of the remark by A.N. Whitehead, with which Prof. Ravi Ravindra open the introduction to his book called the *Science and Sacred*: “It is no exaggerations that the future course of history depends on the decision of this generations as to the relations between religions and science.” Prof. Ravi’s book focuses on these very ‘relations.’ His explorations are unique because he is equally an insider of science and spirituality. He himself has spoken of the hesitation of the western intellectuals in accepting yoga as a science, and made it very clear at the very outset that he wishes to remain true to the universal insight and assertion of the mystics and other spiritual masters that spirit is above the mind. “The question” — he says: “is not ‘how can I appropriate the spirit, but, how can I and my science be appropriated by the spirit.’”⁴

The contemporary religious situation is widely acknowledged to be characterized by secularization and desacralization. Historians, philosophers, social and religious thinkers are almost unanimous and affirming that this is a novel phenomenon in history and that its origin and unfoldment are to be found in the Judeo-Christian traditions. The presence and even occasionally violent expression of some forms of religiosity cannot conceal the fact that mankind lives today in a disenchanted world and religion is no longer the binding force it used to be. ‘Things fall apart. The centre cannot hold’—a prophetic poem by W.B. Yeats had said, anticipating Heidegger, who came to view this age of radical nihilism as the culmination of long process which had started with the Greek philosophical enterprise. Scholars have noted the immense shrinkage in the scope of the sacred brought about by Protestantism which divested religion itself of mystery, miracle and magic – three elements of the Sacred.⁵ And, what about the pluralistic religious milieu of India? Entry into modernity since the last century. This in spite of the twin facts that India has imbibed western science and technology without any resistance or conflict and, also that it has produced a steady succession of great spiritual leaders within a short span of time. Now come to terms with this curious paradox of an ancient tradition, exhibiting such continuous vitality and resilience on the one hand, and then sinking into such an apathy and self-oblivion on the other? As Agyeya — my literary mentor, and the pioneer of New poetry Movement in Hindi, observes in his journal —

The west is no longer under the delusion that its religion, its metaphysics etc. are better than those of the East. They know what it is they lack or have lost and they are genuinely anguished about it. That anguish stirs them into thinking and doing something to solve their predicament before its too late. But, what about ourselves? We seem to be hardly concerned about those very things that should be the cause of the deepest concern to us.

It was via literature that I discovered my deep and abiding interest in spirituality—particularly through my long immersion in the poetry of two major twentieth century poets – W.B. Yeats and T.S. Eliot. At first I was more attuned to Eliot, but as I went deeper in my research on a comparative study, Yeats came to dominate my sensibility. His relations with spirituality seemed to be much more deep and through going than T.S. Eliot, who alienated me not only because of his unconcealed contempt for thorough going than T.S. Eliot, who alienated me not only because of his unconcealed contempt for science and scientists, but also because of the rather narrowly religious and ecclesiastical turn his spirituality came to take.

Here it would be relevant to refer to the testimony of Joseph Needham – the Cambridge scientist who has drawn our attention to the remarkable historical fact that experimental science, from its very beginning found an ally in the religious mysticism, but had to struggle against scholastic rationalism.⁶ Rational theology was an anti scientific, while mystical theology was pro-scientific. Needham in his exploration of ‘Science and’ civilization in China,’ finds that the two component of mysticism which helped science were 1) acknowledgement of existence of mysteries transcending reason and 2) its denial of authority. The examples of two modern Indian poet-sages – Tagore and Aurobindo— too reinforce this point. Man and nature are inseparable for both. To separate them would be for Tagore, ‘like dividing the bud and the blossom.’⁷ To Sri Aurobindo also, man represents the advance of nature towards a higher level of perfection. For both of these poets and sage minds, nature develops into spirit is implicit in nature. Aurobindo acknowledges the benefits conferred upon man by the nineteenth century science with all its materialistic bias. “Paradoxical, as that might at first seem” — he says in his ‘Evolution,’ science has strengthened man’s idealism. On the whole it has given him a kindlier hope and humanized his nature.”⁸

However, one need not be carried away by any superficial optimism, for those idealists themselves have no illusion about human nature as such. Thus, in his most incisively practical and thoroughgoing work called *The Synthesis of Yoga*, Aurobindo finds it imperative to consider ‘the status of knowledge’ itself from a personally realized spiritual standpoint. Here he makes a very clear distinction between secular knowledge and spiritual knowledge:

The Self, the Divine, the Supreme Reality, the All, the Transcendent—the One in all these aspects is the object of Yogic knowledge. Ordinary objects, external appearances of life and matter, the psychology of our thoughts and actions, the perception of the forces of the apparent world can be part of this knowledge, but only in so far as it is part of the manifestation of the One... the knowledge for which Yoga strives must be different from what men understand by the word — an intellectual appreciation of the facts of life, mind and matter and the laws which govern them. This is a knowledge founded upon sense perceptions and upon reasoning from sense-perception. It is undertaken partly for practical efficiency and the added power which knowledge gives in managing our lives and the lives of others, in utilizing for human ends the overt or secret forces of Nature and in helping or hurting our fellow-men. Yoga indeed is commensurate with all life and can include all these subjects and objects. But ‘all life’ included not only life as humanity now leads it. It envisages, rather regards as its true object a higher truly conscious existence which our half-conscious humanity does not yet possess and can only arrive at by a self-exceeding spiritual ascension. It is this greater consciousness and higher existence which is the peculiar and appropriate object of Yogic discipline.⁹

This is the perfect correspondence with what Krishna tells Arjun in Gita: ‘Yo buddeh parastu Sah,’ — that is, the Supreme Reality lies beyond the frontiers of intellect.’ Aurobindo further goes on to say that:

Yogic knowledge seeks to enter into a secret consciousness beyond mind which is only occult here concealed at the basis of all existence. For it is that consciousness alone that truly knows and only by its possession can we possess God and rightly know the world and its secret nature and secret forces.

The knowledge which the sense can bring us, is not true knowledge; it is a science of appearance.¹⁰

Science of appearances! What a tell-tale phrase! And “even the appearances”—Aurobindo goes on to add: “cannot be properly known unless we know first the Reality of which they are images. This reality is their self and there is one self of all; when that is seized, all other things can then be known in their truth and no longer as now only in their appearances.”

How to approach and seize this Reality?—that has been the motivating passion around certain dogmas—and placing them beyond enquiry and intellectual investigation—proclaiming every other way evolved by the worshipping animal called Man, in the course of human history as pagan darkness or devilry. Thus, there arose a terrible contradiction at the very centre of the European vision of human progress and fulfillment: a self-righteously willful cleavage between the natural and the supernatural, which entitles man on the one hand to peep and botanize upon his mother’s grave’—as Wordsworth put it and, on the other hand, to practice with perfect impunity what Aldous Huxley called ‘theological imperialism.’ One is at once reminded of the poetic wisdom of Yeats’s ‘Supernatural Songs’: particular those lines in the song called ‘Ribh denounces St. Patrick’:

Natural and Supernatural with the self same ring are wed.

As man, as beast, as an ephemeral fly begets, Godhead begets Godhead.’¹¹

Can a poem be an argument? If poetry is ‘the light of passion,’ how can a religion of passion look askance at it? Isn’t the same poet’s prayer is ‘the light of passion,’ how can a religion of passion look askance as it? Isn’t the same poet’s prayer closer to out our heart than any religious exhortation?

*Grant me an old man’s frenzy
Myself I must remake
Till I am Timon and Lear
Or that William Blake
Who beat upon the wall
Till truth obeyed his call.*¹²

This is certainly not to simplify or sentimentalize the issue at stake. It is evident that however much we may analyze the physical and the sensible, we cannot by that means arrive at the knowledge of the Self or of ourselves or that which we call God. The telescope and the

microscope cannot go beyond the physical, although they may arrive at subtler and subtler truths about the physical. It is also obvious that if there is a Self, a Reality not obvious to the senses, it must be by other means than those of physical science that it is to be sought and known.

This is certainly not to detract from the importance of intellect. In fact, mystics like Blake or Meister Eckhart would appear to have more in-built respect for the intellect than most intellectuals themselves, who refuse to see anything beyond the intellect. Thus, we find Aurobindo himself acknowledging the role of intellect not only in the field of secular knowledge, but also in the realm of spiritual knowledge:

Undoubtedly there are a number of supra-sensuous truths at which the intellect is able to arrive in its own manner and which it is able to perceive and state as intellectual concept. The very idea of Force for instance, on which Science so much insists, is a conception, a truth at which intellect alone can arrive by going beyond its data; for we do not sense this universal force, but only its results, and infer the force itself as a necessary cause of these results. So also the intellect by following a certain line of rigorous analysis can arrive at the intellectual conception and the intellectual conviction of the Self; and this conviction can be very real, very luminous, very potent as the beginning of other and greater things.¹³

However, it is equally obvious that even this intellectual conception and conviction cannot carry us very far in pursuit of 'the Yoga' which W.B. Yeats calls the religion of the Self, because it is not effective knowledge. After all, what is the use of intellectual conviction if it cannot bring about a real change in our being? As Aurobindo himself clarifies this point:

Still, in itself, intellectual analysis can only lead to an arrangement of true conceptions, but this is not the knowledge aimed at by Yoga. For it is not itself an effective knowledge. A man may be perfect in it and yet be precisely what he was before expect in the mere fact of a greater intellectual illumination. The change of our being at which yoga aims may not at all take place.¹⁴

That precisely is what real religion also seeks: change of one's own being and not the self-righteously motivated urge to convert the 'other.' Of course, intellectual deliberation and right discrimination are an important part of Buddhiyoga, viz the Yoga of knowledge; but their object is rather to remove a difficulty than to arrive at the final and

positive result of this path. That difficulty, that stumbling block in the path of self-knowledge is perhaps the same which Gurdjieff recognized as man's failure to remember himself and his propensity for 'identification.' Even men of intellect—scientists or religionists—are by no means exempt from this self-defeating propensity of self-oblivion. Aurobindo again is very clear about it:

Our ordinary intellectual notions are a stumbling block in the way of knowledge; for they are governed by the error of the senses and they found themselves on the notion that matter and body are the reality, that life and force are the reality, that passion and emotions, and sense are the reality; and with these things, we cannot get back to the real self. Therefore, it is necessary for the seeker of knowledge to remove this stumbling block and get the right thought about oneself and the world.¹⁵

But even this right thought can become effective only when is followed by vision, by experience and by realization. To quote Aurobindo once again,: “the status of knowledge which Yoga envisages is not merely an intellectual conception or clear discrimination of the truth; nor it is an enlightened psychological experience of the modes of our being. It is a ‘realisation’ in the full sense of the word: it is the making real to ourselves and within ourselves of the Self, the transcendent and universal Divine and it is the subsequent impossibility of viewing the modes of being except in the light of that Self and in their true aspects as its flux of becoming under the psychological and physical conditions of our world-existence. Aurobindo further describes this realization thus:

It is only when after long and persistence concentration or by other means, the veil of the mind is rent and conception gives place to a knowledge-vision in which the Self is as physical object to the physical eyes that we possess in knowledge, doer we have seen. After that revelation, whatever fadings of the light, whatever periods of darkness may afflict the soul, it can never irretrievably lose what it has once held.¹⁶

In fact even this ‘seeing’ is not enough. “This vision of the Self ought to be completed by an experience of it in all our members... our whole being ought to demand God and not only our illumined eye of knowledge. For since each principle in us is only a manifestation of the Self, each can get back to its reality and the experience of it.” He sympathises with the difficulty of the modern mind, but hopes that it can borrow some shadow of the vision and experience from that inner

awakening to Nature, which Wordsworth has made a reality to the European imagination. He cites in particular, a poem entitled 'A slumber did my spirit seal,' in which this poet becomes one in his being with earth and says—"exalt this realization to a profounder Self than physical Nature and you have the elements of the Yogic knowledge."¹⁷ Tagore too has left us the record of a similar mysterious experience of Nature in his autobiography.

Coming from a yogi and sage mind of Aurobindo's stature, these reflections leave us in no doubt that the world of the spirit is as real as the senses and that mysteries abound in both. His epic poem 'Savitri' speaks of 'the adventure of consciousness' and this phrase strikes the reader at once as the most appropriate one for describing his own life and work. In fact, one can safely affirm that the adventure of the human mind in various fields including science as well as literature are equally justifiable because their ultimate aim is the creation of some abiding values that widen consciousness—the last irreducible factor in the scale of being. Heidegger, the philosopher of Being talks of concealment and unconcealment as the attributes of Being, and the Gita as well as Bhagwatpurana speak of the close and very special relationship between Man (Nara) and God (Narayan). "You are my devotee as well as friend"— says Krishna to Arjuna. So it is but in the fitness of things that man should also participate in this cosmic play. What lies concealed must be unconcealed and made to yield to the enhancement of the being as a whole. Here science and religion meet on common ground: venturing into the beyond whether aided by a flight of reason or by a living faith, is the motive force in both. Both aspire towards the harmonious development of the collective life of man.

Here it would be relevant to cite the testimony of Sri Anirvan, a yogi as well as the celebrated author of *Vedamimansa*. In his 'Letters from a Baul' addressed to his friend disciple Lizelle Raymond, we find him commenting along with esoteric knowledge also on the relation between science and religion in words which serve to complement and corroborate what we have heard from Aurobindo:

While science lays stress on tangible data, the spiritual quest is more concerned with an army of subjective phenomena which seems to elude the senses. In both, the mind is confronted with some indubitable facts of experience, behind which it perceives the existence of some occult force whose working it tries to grasp and manipulate.¹⁸

Anirvan makes a valuable distinction between the modern scientist and the Vedic seers:

But it was not like this with the Vedic seers. A purity of consciousness allowed them to see reality as a whole; and in the scale of matter, force and spirit they could discern a process of gradual illumination occurring in some mental Being of universal extension and infinite potentiality. This is the integral Vedic vision on which rest the two worlds wherein matter is as easily spiritualized as spirit is materialized.¹⁹

Anirvan also says something towards the close of a profound chapter entitled 'Facing Reality,' which seems to me of particular relevance to the issue we are discussing. This is how he addresses the issue:

You can know intuitively what an atom is by deep concentration and meditation and by inwardly living and becoming within yourself the Void. This is what the mystics have done throughout all ages and climes. What they found subjectively by contemplation, we are now trying to find objectively through science.²⁰

In the beginning of this essay we had invoked the testimony of Vinoba Bhave, as presented by J.N. Mohanty, a contemporary Indian philosopher. It is very interesting and significant to find a pure philosopher and phenomenologist so fascinated by the work of a Gandhian social activist and scholar. Part of Vinoba's appeal for Mohanty is owing to his unusually liberal outlook towards science. According to Vinoba, science and self-knowledge had always pressed beyond that limit; but now even science is making it imperative in various ways. After all, the science attitude seems to attain to an ideal of detachment and universality that is hardly compatible with the self-assertion and attachments of mere mental consciousness. As Mohanty puts it," this need of cooperation between the two is an imperative need of the day. A stage has arrived in the course of the development of science where an inadequate conception of self, if made the basis of human affairs, would bring ruin upon mankind.²¹ That the wide scope of human knowledge and the immense technological power at his disposal are not in proportion to his inner spiritual attainments is a malady that is recognized by many thinkers of our time. Vinoba Bhave's thought, however is marked by the belief that there is no room for despair, that an adjustment is destined to emerge. A truly spiritual ideal like an ideal social order cannot but take into account this element of truth. It cannot build itself on the basis of man's separative egoism; it

has to be based on the conception of his spiritual unity with his fellow-beings. Aurobindo has preached the ideal of the liberation of all mankind. For Vinoba, the ideal has roots not only in ancient self-knowledge, but also in the modern scientific attitude.

Notes

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4. Ravi Ravindra, Science and the Sacred, introduction, p. 21
5. J.L.Mehta, Philosophy and the Religion, p. 246
6. Joseph Needham, Science and the Civilization in China, voll, pp. 90- 91
7. Tagore, Religion of Man
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9. Sri Aurobindo, The Synthesis of Yoga, Pondicherry, Part II p.286
10. Ibid, p.287
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16. Ibid, p.291
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Sri Narayana Guru: Saint as Revolutionary

Rajeev Srinivasan*

Introduction

Once upon a time, not so long ago, Swami Vivekananda came to Kerala. He was so outraged by the overt discrimination by the practices imposed on so-called 'lower-*jati*' people that he declared the place a lunatic asylum.

Temples and public wells were out of bounds to them. 'Lower-*jati*' people were not allowed to cover the upper body: even women had to go bare-breasted, and were forbidden jewellery. They had to use self-abasing language to refer to themselves, and fulsome praise in referring to 'upper-*jatis*': thus reinforcing with every word their own unworthiness.

There existed not only untouchability; there was unshadowability – that is, a 'lower-*jati*' person's shadow would pollute, so there were defined distances – 5 feet, 30 feet – beyond which members of different *jatis* had to stand. There was even 'unseeability.' At least one *jati* of lowly hunters was considered so inauspicious that the very sight of them would cause pollution. These unfortunates had to shout, "I am coming this way, please look away!" to avoid being seen.

Startlingly, these pollution laws only applied to Hindus. Any 'lower-*jati*' person only had to convert to Christianity or Islam, and immediately they were immune. There were many roads along which 'lower-*jati*' Hindus were not allowed to pass, but Christians and Muslims could use them.

Today, a bare one hundred years later, Kerala is a model of egalitarianism. A mass movement forced the Maharaja of Travancore

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to make the epoch-making “Temple Entry Proclamation” on November 12, 1936, throwing open all temples to all Hindus.

What had changed was the mindset of the masses. This metamorphosis required a revolution. And this revolution was inspired and catalyzed by an unlikely revolutionary: an orthodox Saivite vedantin, a practicing ascetic and monk who composed innumerable devotional songs in Sanskrit, Tamil and Malayalam: Sri Narayana Guru.

When one talks about the Guru, one is forced to use superlatives, and to compare him with a galaxy of notables: the greatest Hindu reformer to come out of Southern India since Adi Sankara; the greatest champion of the rights of oppressed Hindus in the twentieth century, more successful than Mahatma Gandhi and Dr. Ambedkar.

The one who overturned the entire social system of Kerala, but without creating social rupture and reverse oppression like E.V. Ramaswamy Naicker did in Tamil Nadu. The radical reformer whose clarion call of self reliance and self improvement strikes a chord everywhere. The man whose ideals inspired Kumaran Asan’s clarion call:

*mattvin chattangale! allenkil mattum athukalee ningalethan!
Reform, change the rules! Else those very Rules will be your downfall!*

And Sri Narayana Guru was able to do this entirely within the framework of Hinduism. One of Hinduism’s greatest strengths is its capacity for renewal, renaissance, reform. Hinduism, alone amongst the world’s numerically dominant religions, is susceptible to reform. It **can** be reformed, and indeed it may **need** to be reformed periodically. In historical times, every 1200 years or so, Hinduism has indeed reformed itself.

In the Bhagavad Gita, the Lord promises to return when ignorance and evil run riot:

*Yada yadahi dharmasya glanirbhavati bharata
Abhyuthanam adharmasya tadatmanam srujam yaham
Paritranaya sadhunam vinasaya cha dushkrtam
Dharma samsthapanardhaya sambhavami yuge yuge*

When the *sanatana dharma* became decadent 2500 years ago, the divine personalities of the Buddha and Mahavira appeared. Their Reformation corrected undesirable practices that had accumulated in the dharma, returning it to its roots.

But heresies too decay. Twelve hundred years later, when the dharma needed a counter-reformation, there appeared Adi Sankara,

Manikkavachakar, Tirujnana Sambandhar, Avvaiyyar, Jayadeva and Meerabai, whose intellect and devotion helped Hinduism rejuvenate itself.

Similarly, another twelve hundred years later, a galaxy of sages appeared: Raja Rammohun Roy, Dayanand Saraswati, Ramana Maharshi, Sri Ramakrishna, Swami Vivekananda, Sri Aurobindo, Babasaheb Ambedkar, Mohandas Gandhi, Sri Narayana Guru. It was the Divine reincarnating Himself.

It is clear to historians too that *mahapurushas* appear from time to time. Says Arnold Toynbee in *A Study of History*: individuals arise “who set going the process of growth in the societies to which they ‘belong’... They can work what to men seem miracles because they themselves are superhuman in a literal and no mere metaphorical sense.”

Sri Narayana Guru was such a man of the ages, a *yugapurusha*. His words and actions are universal: and his exhortation to them to gain self-respect and to make themselves indubitably worthy of respect by others is stirring.

In essence, the Guru’s message was very simple:

*vidya kondu prabuddhar avuka sanghatana kondu shaktar
avuka
prayatnam kondu sampannar avuka
become enlightened, through education become strengthened,
through organization become prosperous, through hard work*

The Guru’s message resonated with other great men. Rabindranath Tagore recorded after his visit to Sivagiri: “I have been touring different parts of the world... During these travels, I have had the good fortune to come into contact with several saints and maharshis. But I have frankly to admit that I have never come across one who is spiritually greater than Swami Sri Narayana Guru of Kerala – nay, a person who is on par with him in spiritual attainments. I am sure I shall never forget that radiant face, illumined by the self-effulgent light of divine glory and those yogic eyes fixing their gaze on a remote point on a far-away horizon.”

Mahatma Gandhi was similarly impressed. Their meeting must have had a major impact on Gandhi’s views on the issue of *jati*, for thereafter he redoubled his efforts to remove casteism. He wrote in the guest book: “I consider it the greatest good fortune of my life to have visited the beautiful Travancore State and met the most venerable saint, Sri Narayana Guru Swami *trippadangal*.”

For unclear reasons, the Guru's extraordinary achievements have not received their full due outside Kerala, even though he was one of the greatest sons of India, in the lineage of the Buddha and Adi Sankara.

History, *Jati* and Demographics in Kerala

Kerala is a remarkable place by any standards, for it stands out so distinctly from the rest of India. The landscape is different, the customs are different. Kerala has always pursued its own path. Sea borne trade for its coveted spices gave Kerala a certain cosmopolitanism: Jews fleeing Romans arrived in 72 CE after the destruction of their Second Temple; Syrian Christians under the merchant Thomas of Canaan, fleeing persecution, arrived around 350 CE; and Arabs, newly converted to Islam, brought their religion circa 700 CE. For all three religions, this was their first arrival in India.

There is evidence that Kerala was mostly Buddhist and Jain once. There is the revered monk Bodhidharma (who sailed to China and Japan from Kodungalloor¹), the originator of the Zen school of Buddhism. Bodhidharma is honoured to this day as Daruma, the preceptor, in Japan, and immortalized in the Zen koan "Why did Bodhidharma go to the East?"

The great temple at Sabarimala was partly a Buddhist shrine: it was visited by the Chinese traveller Hsiuen Tsang, who described it as a place of worship by both Saivites and by Buddhists, the latter worshipping the Avalokiteswara Padmapani, the Bodhisattva of compassion. The temple of Kannaki at Kodungalloor was, similarly, almost certainly a Buddhist nunnery.

But Buddhism and Jainism declined and disappeared. The most widely accepted explanation is as follows: perhaps around 600 CE, a Hindu resurgence began, when Sanskrit speaking Brahmins established their sway in Kerala. The very word *nambuthiri* for Malayali Brahmins has been parsed as *nambu* + *thero*, where *nambu* is old Tamil for new, and *thero*, whence theravada, is a Buddhist priest.

Those Buddhists who collaborated with the Hindu takeover, goes this theory, were "promoted" in *jati* so that, while still sudras, they were deemed "high sudras." The others, the masses, were considered "low sudras." It is a peculiarity of Kerala that there are practically no kshatriyas or vaishyas: there are Brahmin Nambuthiris, but the rest of Kerala's Hindus are largely sudras or outside the *jati* system.

The *bahujan* or the peasant class who were thus converted to avarna “low sudras” became, in due course, the Ezhavas and Nadars of southern Kerala and southern Tamil Nadu, the Thiyyas of northern Kerala and the Billavas of southern Karnataka. Then as now they form the largest group of Hindus in Kerala, despite large-scale conversion to Christianity.

After the decline of Buddhism and Jainism, the social structure of Kerala was affected by invasions and colonization by Tipu and the British. After the British defeated Tipu Sultan, his realm in Malabar came under their rule. The states of Travancore and Cochin came under the heavy influence of the British, who stationed ‘Residents’ to browbeat the kings.

A big part of the agenda of the British² was Christianization. One Col. Munro, a resident in Travancore forced the then ruler of Travancore in 1819 to donate Rs. 10,000 to establish a Syrian Christian seminary at Kottayam. In today’s terms, this was a very large sum, amounting to about \$300 million. As a result of the establishment of this seminary and associated school, large-scale conversions to Christianity began. A major attraction was that the Christians would offer education to anyone who converted: not surprisingly, large numbers of the ‘lower-*jatis*’ converted, expecting to improve themselves through education.

Numbers from the Travancore Manual reflect the demographic changes. In 1820, Travancore had 6 per cent Muslims and 6 per cent Christians. One hundred years later, Travancore had about 8 per cent Muslims, and 33 per cent Christians! Yet the lower-*jati* Hindus continued to be oppressed.

The life of the average Ezhava was not pleasant, yet they were relatively privileged. There were wealthy land-owning Ezhava families, and many Sanskrit scholars and *vaidyas* were Ezhava. The truly oppressed Scheduled Castes, such as the Parayyas and Pulayyas, suffered far worse trauma. They were expected to work as agricultural labourers from dawn to dusk, and were generally not paid in cash, but in produce.

None of the ‘low-*jati*’ Hindus had access to temples. In the famous Vaikom Satyagraha in 1924, Ezhavas and others demanded the right to merely walk on the streets surrounding the famous Siva Mahadeva temple at Vaikom; this was denied to them, but not to Muslims or Christians!

There were also social ills among the ‘low-*jatis*.’ Some practiced polyandry or polygamy. The ‘low-*jatis*’ were banned from worshipping the great deities of Hinduism. They had quasi-temples, under a tree or

on a roadside, to primitive deities – *madan*, *maruta*, *yakshi*, *chathan*, *muthappan* – fierce, autochthonic powers that were distorted versions of Siva and Sakti. These powers were pacified with offerings of liquor and meat.

This was the social environment into which Sri Narayana Guru was born. It would have been easy for the Guru to preach that Hinduism was hopeless, that the sanatana dharma had degenerated. It is to his great credit that he realized that there was nothing wrong with Hinduism that a little moral force could not cure.

Today, one would be hard-pressed to find in Kerala anyone who believes he is inferior to anyone else in the world: poorer in circumstances, perhaps, but no less. What a change from the self-abasement of ‘low-*jati*’ Hindus!

The Guru’s most significant message was: “one *jati*, one religion, one God for man” – and that was not an oppressive monotheism, but the pantheistic monism of Adi Sankara’s Advaita. All of us belong to one *jati*: the human *jati*; one religion: the religion of humanism; and we should worship one God, the Creator of all of us. The Guru believed that “it doesn’t matter what your religion is, you just have to better yourself.”

The Making of the Guru

The young Narayanana, also known as Nanu, was born to Madan Asan and Kochupennu, of Vayalvarath house, a middle-class Ezhava family, at Chempazhanthi near Trivandrum on the 26th of August 1856. Common Era or chathayam nakshatram in Chingam (Leo), 1032 Malabar Era. Madan Asan was a farmer and Asan or village schoolmaster. Kochupennu was a housewife. And Nanu’s uncle, Krishnan Vaidyar, was an ayurvedic physician of considerable repute.

As a young boy, Nanu was notable for his piety (he was known for a while as “Nanu bhakta”) and his compassion towards others. He never failed to visit nearby temples; every day, he would take a ritual bath, visit the temple, pray, and adorn himself with sacred ash.

As a youngster, Nanu once fell ill with the smallpox. He spent the entire duration of 18 days at a Devi temple. Without uttering a word to anyone, Nanu stayed alone at the temple, prayed and chanted, and sustained himself on alms. On the nineteenth day, cured, he went home. His astonished parents asked who healed him, the answer: “The Bhagavati did.”

Nanu was studious. At the age of five, he was inducted into written Malayalam by a local village officer. From his uncle, Nanu learned Sanskrit. On his own, he learned Tamil. He read the *Tolkappiyam*, *Chilappathikaram*, *Manimekhala*, and *the Tirukkural*, and became fluent in old Tamil.

Young Nanu was sent to study Sanskrit under a well known teacher, Raman Pillai Asan. He turned out to be an exceptional student. Even though the original intent had been to teach the *Raghuvamsam* and *Kumarasambhavam*, the Asan soon realized that his pupil was capable of more, so he taught him grammar, rhetoric and logic, as well as Vedanta.

After also becoming adept at hatha yoga, a prelude to his later practice of raja yoga, Nanu Asan continued his wanderings around Southern India. He was following in the footsteps of innumerable saints and seekers after the Truth of this ancient land. He spent his nights outdoors under the canopy of the stars.

It was during this time that “Nanu Asan” metamorphosed into “Nanu Swami.” Nanu Swami spent many months in a cave at the summit of Marutvamala. He chose this wonderfully scenic location, with the ocean in the distance, and an unfettered view of the far horizon. He spent much time in the cave in yogic postures.

Some time during this period of intense sadhana, deep penance and meditation, he attained a Buddha-like Enlightenment; he became a self-realized soul. Here he achieved the kind of self-knowledge that he celebrated in *Atmopadesa satakam* (One Hundred Verses of Self Instruction).

That point marked the transition from “Nanu Swami” to “Sri Narayana Guru Swami,” for he was no longer merely an adept. He had gone beyond *jnanayoga*, into *rajayoga*. Now it was time to bring his knowledge to the masses, to begin *karmayoga*. His long years of preparation and sadhana had made him a *jeevanmukta*: now, at the age of thirty-one, he had an obligation to return to the society and share the wisdom that had come to him.

Consecration at Aruvippuram

Swami Vivekananda once said:

“We must prove the truth of pure Advaitism in practical life. Sankara left this Advaita philosophy in the hills and forests, while I have come to bring it out of these places and scatter it broadcast before the workaday world and society.”

And that is what Sri Narayana Guru Swami also did. For, instead of being satisfied with esoteric and arcane philosophy, his vision was to translate his knowledge into action. He took on hundreds of years of orthodoxy. It had been ingrained into the minds of everyone in Kerala that only ‘upper-*jatis*’ were allowed to worship the great Trinity of Hinduism. Only Brahmins were allowed to consecrate temples. Why? Nobody knew.

Into this milieu came the Guru’s act of consecrating a Siva temple at Aruvippuram. It is difficult in hindsight to comprehend the force of the act: it was similar to the Buddha and Mahavira proposing their own heresies, and Martin Luther nailing his 95 Theses to a church door. It was a non-violent revolution of faith.

Aruvippuram is a small, quiet village on the banks of the Neyyar River. The Guru went there after Marutvamala; he found a cave, and a hilltop boulder to meditate, while enjoying the bounteous beauty of nature all around.

Over the years, the Guru had become a Siva bhakta, although in his youth he had been a devotee of Subrahmanya and of Krishna. Now his *ishta devata* was none other than the Lord Siva, who as Pasupati graces the seals of the Sarasvati Civilization. Siva was the deity that the Guru wished to consecrate at Aruvippuram.

This ran into an immediate problem: which Brahmin would come to this jungle to do this?

The auspicious date and time for the consecration were chosen: midnight, on Sivaratri in the month of Kumbham (Aquarius), 1063 ME or 1888 CE. A large boulder on the eastern bank was chosen as the pedestal for the consecrated *murti*. The area was cleansed and festooned with garlands; temple music was played. The Guru sat nearby, deep in meditation. The organizers of the event began to get a little restive: where was the *murti*?

From Kumaran Asan’s unfinished biography of the Guru, here is a quoted eyewitness account:

“At midnight, Swami took a dip in the river. He rose after a moment with something in his hands, a cylindrical stone in the shape of a sivalinga, and he walked into the makeshift temple. He stood there with his eyes closed in deep meditation, his hands holding the sivalinga to his chest, tears flowing down his cheeks, oblivious to the world. For a full three hours, he stood motionless, while the crowd rent the midnight air with the chant “Om Nama Sivayah,” “Om Nama Sivayaha.” They had only one impulse, one thought, one prayer, ‘Om Nama Sivayah!’”

This was a singular moment, a moment in which a man became as God, achieving union with Him, Siva, the One.

At three in the morning, the Guru placed the *sivalinga* on the pedestal, performing all the formalities of that sacred rite.

This was the first *satyagraha*, much before Mahatma Gandhi invented it. The orthodox raised the question: "How could a non-Brahmin consecrate an image?" To which, the Guru replied, with characteristic dryness, "I have only installed an Ezhava Siva."

That simple but explosive statement brings out a sublime paradox: how could Siva, the Infinite, the Creator, be 'merely' an 'Ezhava Siva?' Conversely, how could Siva, the Infinite, the Creator, be 'owned' by Brahmins, so that they alone could interact with Him? And why exactly is a Brahmin's brahminhood determined solely by birth, and not by his actions, even if he were a criminal? Why would a learned monk, purified by decades of penance and meditation, not have the right to do the consecration?

In the harsh glare of intellectual enquiry, it was clear that casteism had no basis, either in the Vedas or the Upanishads or in the Bhagavad Gita. The orthodox had no answer to the challenge thrown up good humouredly by the Guru.

In course of time, a temple was built where the image had been installed. A monastery also came up nearby, and there celibate monks of all *jatis* were trained. For a while, the Guru himself lived in a small dwelling there. He had the following stanza inscribed at the entrance to the temple:

*Jati bhedam mata dwesham etum illaathe sarvarum
Sodara twena vazhunna
Matrka sthanam aanithu*

Free of the prejudice of caste
And religion, everyone here Lives like brothers
In this exemplary abode.

The Guru's message could not be clearer: *liberte, egalite, fraternite*. It embodies in four lines the vision that the Guru had for an emancipated. This exemplary abode shows us the way to our Rama Rajya, our Millennium, our City on the Hill.

Organization and the SNDP Yogam

After the temple at Aruvippuram was built, an unofficial committee came into existence to ensure its smooth functioning. Later, in 1074

ME or 1898 CE, it was registered as a society, which became the focal point of the social movement.

Gradually, the Temple Committee started looking more broadly at the issue of sustaining the momentum of social change. Through it, the Guru began to tackle other ills in Hindu society: the worship of fierce tribal deities; wasteful practices such as child marriages, celebration of menarche, expensive pilgrimages and other such. It was this temple committee that over time became the nucleus of the Sri Narayana Dharma Paripalana Yogam.

It was during this period that the Guru met one of his most illustrious disciples, the future Mahakavi Kumaran Asan. Under the Guru's influence, the youngster who began by writing romantic poetry became a vendantin and a yogi: his work, suffused with ideas from Buddhism and Vedanta, is praised as a pinnacle of Malayalam poetry. His masterworks such as *Veena Poovu* (an elegy on a fallen flower), *Nalini*, *Karuna*, *Duravasta*, *Chandala Bhikshuki*, etc. established him as a genius.

After the initial meeting, the Guru sent Kumaru to Bangalore and Calcutta to continue his education, under the tutelage of the physician and social activist Dr. Palpu. Kumaran Asan returned to Kerala in 1900, and thereafter was active in the service of the Guru for many years until his tragic death when a boat sank on the River Pallana.

Dr. Palpu took extended leave of absence from his job and came to Travancore in 1896 with the express intention of organizing and improving the lot of his fellow Ezhavas. He toured all over Travancore.

Dr. Palpu had met Swami Vivekananda, who advised him to seek a spiritual leader. He said: "If you want to speak of politics in India, you must speak through the language of religion." This is a truism in India: the only way social ideas can make headway is if they engage the spiritual attention of the populace. Sri Aurobindo said elsewhere: "All great awakenings in India, all her periods of mightiest and most varied vigour, have drawn their vitality from the fountainheads of some deep religious awakening. Whenever religious awakening has been complete and grand, the national energy it has created has been gigantic and puissant."

Thus, the stage was set for a meeting of minds between the Guru and Dr. Palpu: the former needed a man of the world to take his wisdom and enlightenment to the masses; and the latter needed a mystic whose authority would enable him to spread the message of self-improvement.

Dr. Palpu and the Guru decided to transform the Temple Committee into the Sri Narayana Dharma Paripalana Yogam, a joint stock company. The SNDP Yogam had several important objectives: first, to administer various temples and monasteries; second, to uplift the downtrodden masses; third, to demand justice and fairness through collective bargaining; and fourth, to emphasise economic progress.

The Yogam set about building schools, and later colleges, where anybody could study. The Guru suggested the study of English as well for its commercial value; he insisted that women be educated the same as males.

As part of its social and political agenda the Yogam pursued the issue of representation in the Travancore Legislature. For instance Ezhavas, 20 per cent of the population, had not a single representative. In an echo of the American slogan, "No taxation without representation," the SNDP Yogam managed to get Ezhavas and other lower-*jatis* into the legislature. Then there was the right for lower-*jatis* to use public roads, which had hitherto been denied to them.

The last demand precipitated the famous Vaikom Satyagraha of 1924, led by T. K. Madhavan, an organizational genius. With his journal "Deshabhimani," Madhavan was a proponent of the Civil Rights Movement in Travancore. Vaikom led to the Temple Entry Proclamation in 1936.

In the meantime, the Guru continued to advise the SNDP Yogam on many matters, but his prime concern was the establishment, maintenance and upkeep of temples. The Guru believed that the temple was the social and spiritual centre of the community, and that it would serve as the focal point for educating and ennobling the masses. Therefore, he consecrated a series of temples, often making a statement with the *murtis* he chose.

Foremost is Sivagiri in Varkala. In 1912, he had completed the consecration of the Sarada temple there, dedicated to Sarasvati. It was a novel temple, one without any ritual: the only thing that a devotee would do there is to chant a mantra or meditate silently. Similarly, at the Advaita Ashrama on the banks of the Periyar, there is neither shrine or deity. The innovations in his choice of images are interesting. At the Mahadeva temple, he installed a lamp made of *panchaloha*, five metals; the sacred syllable 'AUM' is inscribed thereon. At Kulavancode, he installed a mirror, again with AUM inscribed on it. Other major temples included the Jagannatha temple and the Sri Kanteswara temple Malabar.

The Guru's instructions were simple. The temples would obviously be open to all Hindus; avoid unnecessary expenditures on fireworks and festivals; would all have schools, vegetable and herb gardens, and industry attached to them. By industry, he meant any manufacture, even something as simple as the conversion of raw coconut shells into lampshades.

In summary, the SNDP Yogam, set up as a religious and cultural organization, spearheaded the movement for propagating the Guru's message. Unfortunately, the Yogam has for all practical purposes become an Ezhava movement. But this is a great disservice to the Guru; and even more of a disservice to the *sanatana dharma*.

The All Religion Conference and the Later Years

A few years later, the Guru desired to conduct an All Religion Conference, where the objective was "not to argue and defeat, but to know and to inform" : a remarkably forward looking perspective. The Guru also said: "It doesn't matter what your religion is, it is enough if man improves. Don't ask, don't tell, and don't think *jati*."

The Conference was held at Aluva in ME 1099 or 1924 CE, at the Advaita Ashram. For long, the Guru had held the view that all religions had the same basis:

"... Religions merely have the right to encourage men to look upwards at the heavens. If they have that, they will figure out the truth themselves. Religions are just roadsigns on the way to the truth. Someone who has realized the truth does not give any credence to religion. Indeed, for religion, he is credence. Did the Buddha learn Buddhism first to tell us the path to nirvana? No, he sought the path to nirvana, found it and then taught it. Later that became Buddhism. Does the Buddha benefit from Buddhism... The common man must give credence to the scriptures of the religion that he believes in. It is important for religious leaders to be careful that there is no advice in the scriptures that are against dharma... Conflicts between nations or communities will end when one defeats the other. However, when religions are in conflict, there is no end to it because one cannot defeat the other. For religious conflict to end, everyone should study every religion with an unbiased mind. Then it will be obvious that in their major principles, they are not so different. That which is thus obvious is the only religion that I recommend."

The All Religion Conference was first held in India. Scholars represented different religions and other perspectives. Satyavrataswami gave a brilliant speech outlining the Guru's vision. Arya Samajist Rishi Ram, Swami Sivaprasad of the Brahmo Samaj, and a Buddhist bhikshu from Sri Lanka represented Indic religions. Semitic perspectives came from Islam's Mohammed Maulvi and Christianity's K. K. Kuruvilla. Rationalist/atheist views were represented by C. Krishnan and Manjeri Rama Krishna Iyer.

The historic Vaikom Satyagraha also took place in 1924. For the first time in India, the 'low-jatis' rose up against casteism in a determined, non-violent manner with a strong moral component. Even though it did not succeed immediately in its objective, the opening up of the roads around the Mahadeva temple to all Hindus, it was the catalyst that led to Temple Entry later. The Guru gave his full support to the satyagrahis. It was roughly in this time frame that both Tagore (in 1922) and Gandhi (in 1925) visited Sivagiri and met the Guru.

Over the next few years, the Guru travelled in Sri Lanka and Tamil Nadu extensively. He visited various Buddhist temples in Colombo, Kandy and elsewhere. But there is some indication that the Guru's travels were disturbed by factional infighting and other problems at Sivagiri. Furthermore, the deaths of Kumaran Asan in 1924 and Satyavrataswami in 1926, two of his favourite disciples, may have affected the Guru personally. Their deaths certainly affected the cogency of the movement.

Perhaps as a result of this, or because of his advancing years (his 70th birthday was celebrated in 1926), the Guru grew more pensive, and began making plans for his succession. In September 1925, he formally anointed Bodhanandaswami. He drew up his last will and testament, wherein he included instructions for the formation of an order of monks, to which he willed his entire worldly possessions, including monasteries, temples, and all other assets. In 1928, the Sri Narayana Dharma Sangham, an order of monks, was duly set up.

The Guru's desire was that a disciplined order of monks – harking back to the Buddha's original concept of the *sangha* – should be established, which would ultimately help transform society and take it towards the ideal of Rama Rajya.

The last public meeting that the Guru addressed was a special meeting of the Yogam at Kottayam, in 1928. This was a proud moment for the Yogam: it now had 108 branches and a membership of over 50,000, thanks especially to the organizational genius of T. K. Madhavan.

The movement that the Guru had ignited at Aruvippuram had truly become a mass movement, and it continues to this day.

It was in the same year that the idea of a pilgrimage to Sivagiri was mooted. Every year, at the end of December, you see large groups of yellow clad pilgrims travelling, usually on foot, to Sivagiri. These are the salt of the earth: poor, dark skinned, undernourished people, the underprivileged of Kerala, still struggling one hundred years after the founding of the SNDP Yogam. The fact that they still believe is a testament to the enduring revolution started by the Guru. The fact that they are still poor and downtrodden is a testimony to the fact that there are still miles to go.

It was after the Kottayam meeting that the Guru felt acute trouble from the illness that was to finally bring this remarkable life to an end: prostate enlargement. Rest at the Aluva ashram did not seem to improve things, so he went to Palghat, and later to Chennai, to seek the advice of various doctors. Nothing seemed to work, so he returned to Sivagiri to begin ayurvedic treatment. Even though the illness did not subside, he felt better.

Some of his disciples were astonished: why couldn't the Swami cure himself? Wasn't he a miracle worker and an adept *vaidya*? After all, myths about his powers had spread far and wide. But the Guru lived and died like all mortals, suffering.

The Guru's seventy second birthday arrived, and there was no celebration. His condition continued to worsen, and it reached a stage where he needed help to move. Yet, his calm and his witty speech remained. The Guru knew that his end was near, and he prepared himself mentally to leave this realm: he said his goodbyes to disciples and friends, and made arrangements to settle all his affairs.

On the 5th of Kanni (Virgo), 1104 ME or September 20th 1928, a rainy day, the Guru said: "I feel at peace." His visage cleared, and so did the clouds, in the afternoon. He asked that his own creation, *Daivadasakam*, (Ten Verses to God), be chanted. Listening to the last stanza:

Into the sea of Thy Glory profound
Let us all plunge,
And flourish ever,
Flourish, in happiness flourish.

The Guru attained *samadhi* at 3pm. The *avatara purusha*, the man of the ages, was no more.

Sri Narayana's Thought Today

The Aruvippuram consecration took place in 1888 CE; the establishment of the SNDP Yogam in 1903 CE. Today, one hundred years later, it is instructive to consider what the Guru's impact has been.

In some ways, the Guru's impact has been electric; in other ways, there is disappointment. For instance, in the plus category must lie the immense shift in perspective of society, nowhere more evident than in the palpable self-image of 'lower-*jati*' Hindus in Kerala. They have dignity.

A few years ago, we interviewed the late Sankaracharya of Kanchi, Srimad Jayendra Sarasvati. During the conversation, we asked him how a place like Bihar, which suffers greatly from *jati*-related problems could improve itself. The Seer's response was: "A great man like Sri Narayana Guru will have to be born there."

On another occasion, when a brief review of Dr. K. Sreenivasan's biography of the Guru was published in the American magazine *Hinduism Today*, we received a surprising letter from a black American man in prison. He said that he wished he had heard of the Guru's message of self-respect and self-improvement when he was a young man. If he had, his life would not have degenerated into a downward, self-destructive spiral, and he might have been a respectable citizen, not a criminal.

These anecdotes show how the universality of the Guru's messages, both in their simple, practical form as well as in their deep, philosophical form, appeal across the spectrum. This is the greatest achievement of the Guru: he was able to turn the complex philosophies of Advaita into something that is easily grasped: he was following in the footsteps of the great Bhakti saints like Manikkavachakar and Meerabai who brought Hinduism to the masses.

On the other hand, the disappointment comes from several perspectives: one is that the Guru's message has not received the attention it merits; the second is that the upliftment of the oppressed has not been as thoroughgoing as one would wish; the third is that the very organizations that the Guru created have gone through their own evolution, not necessarily in ways that the Guru would have approved.

It is true that the plight of the average citizen has not improved as much as one would have hoped after seventy years of self-rule. Once the rapacious colonialists departed, it was hoped, India would revert to the kind of self-governing, benign republic that thrived, for example at

Uttamerur in Tamil Nadu centuries ago. This has not happened, and the numbers of poor, underprivileged, undernourished Ezhavas who go, yellow-clad, on the Sivagiri pilgrimage, is itself a signal that the revolution remains incomplete.

There are three organizations that have different roles to play in propagating the Guru's thoughts:

The SNDP Yogam

The Sivagiri Matham Sannyasi Sangham

The Sri Narayana Gurukulam

Just as the organizations founded by the Buddha deteriorated after his death – they even started deifying the Buddha who had expressly denied the very existence of God – so have the Guru's own creations not quite turned out the way he would have wanted them to proceed.

Despite the fact that the Yogam was intended to be a universal brotherhood, in effect it has become a lobbying group for Ezhavas. The Ezhavas have not been an effective vote bank, because they have by and large supported the Marxist party, without trying to be a swing vote capable of extracting concessions from the major political parties. The SNDP Yogam wants to position itself as the unquestioned vote bank of the Ezhavas, in the pursuit of which it has even created a political party.

The Sannyasi Sangham was intended to be a monastic order on the lines of the Buddhist sangha: an order of renunciants living according to the precepts of the Guru's poem *Asramam*. Unfortunately, the order has become preoccupied with more worldly matters, such as managing the land and temples under its control. It has also begun to indulge in politics, and factional in-fighting there has worsened to such an extent that there have been shameful incidents: court-ordered change of leadership, and alarmingly, a police attack on the Sivagiri shrine itself.

The Gurukulam has kept aloof from worldly matters, and has concentrated on the philosophy of the Guru. Under the able guidance of Nataraja Guru, the Sorbonne educated son of Dr. Palpu, the East-West Centre for Brahavidya at Sivagiri became a showpiece of the Gurukulam's work on propagating the Guru's word in the realm of philosophy.

Is this a sufficient legacy for one who was a man of the ages, a yugu-purusha? As Swami Dharmateerth suggests:

“Sri Narayana Guru occupies a distinct place in the history of Hindu culture and the successive attempts made by great teachers to consolidate the people of India into a united nation... The Buddha

made us one in Righteousness; Sri Sankara made us one in the Spirit and Truth; Sri Narayana Guru seeks to make us one in the living brotherhood of a free nation...”

And further:

“He created a revolution before anybody knew its exact nature or consequences, without antagonizing anyone or demolishing any doctrine or attacking any sector creed. No other great teacher ever accomplished his mission so peacefully.”

The Guru, this gentle revolutionary, deserves a greater legacy. His vision was to turn India into a nation of self-confident human beings with dignity. There is much left to be done to get there. But when India finally bestrides the world scene like a colossus, regaining its lost economic and cultural dominance of ages past, the gentle and wry, but steely and determined, Sri Narayana Guru Swami will be remembered as one of the architects of the revolution that turned a nation of slaves into a nation of men.

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Notes

- ¹ Kodungalloor was the port known as Muziris. Bodhidharma may have been a Pallava prince from Kanchipuram, who came to Kerala to learn kalari payat and the science of pressure points. He travelled first to the Shaolin monastery in China where he instructed the monks in the art of self-defense: whence judo, karate, kung-fu etc. Later, he went to Japan and founded Zen Buddhism: he is the revered preceptor known as Daruma.
- ² As described in the magisterial ‘The Raj Syndrome’ by Suhash Chakravarty.

A Socio-Political Reading of *Bhakti* in the *Bhagavadgītā* : What it Means to Belong to an Institution?

Binod Kumar Agarwala*

1. The Issue

The present essay intends to answer the question: what is the sense of *bhakti* in the *Bhagavadgītā*? There are two notions of *bhakti*: one having its roots in the *Ṛgveda* and the other originating with the *Bhāgavata Purāṇa*. The *Vedic* notion of *bhakti* was more or less forgotten by the time of the *Bhāgavata Purāṇa* and most of modern commentators, when they traced the lineage of *bhakti* to the *Vedas*, try to understand and interpret it in light of the later notion of *bhakti*. The earlier sense of *bhakti* is ‘sharing, participation, partaking, belonging to,’ while the latter sense of the term is ‘attachment, devotion, service, love.’ So the question raised earlier can be reformulated as follows: Which of these two senses of *bhakti* is present in the *Bhagavadgītā*? The answer that is suggested is that it is *bhakti* only in the *Vedic* sense that is present in the *Bhagavadgītā*.

2. The *Vedic* Notion of *Bhakti*

In *Ṛgveda bhakta* is either the share obtained by the sacrificer from the deity (1.24.5; 4.1.10; 10.45.9), or coveresly, the share that is given or apportioned to the deities by the sacrificer (1.91.1, 10.51.7). In the latter case sacrificial priest is the *vibhaktr*. But in later literature the word *bhakta* came to be applied to *Vedic vibhaktr*: ‘the one who shares or apportions.’

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By the use of words like *bhaga*, *bhāga*, *bhakta*, *vibhaktr*, *bhagavān*, *bhagavat* and *bhagavanta* the Ṛgveda delineated the semantic field for the introduction of the word *bhakti* in later Vedic literature. Other Vedic Saṃhitās also use the words related to *bhakti* in the semantic field that is delineated by Ṛgveda. For example *bhakta* means ‘share’ in Sāmaveda 4. 1. 2. 14. 2 (752) and *Kṛṣṇa Yajurveda (Maitrāyaṇī) Saṃhitā* (1.4.12; 1.5.4). The expression *bhaktivāno* meaning "sharers" occurs in *Kṛṣṇa Yajurveda (Maitrāyaṇī) Saṃhitā* (1.4.3; 1.5.3; 1.5.10). In *Atharvaveda (Śaunaka)* 6,79.3 one finds the word *bhaktivāmsa* in the sense of ‘sharer’. It is interesting to note that the word *bhakti* occurs in *Kṛṣṇa Yajurveda (Maitrāyaṇī) Saṃhitā* and *Atharvaveda (Śaunaka)* but not as an independent word but as part of a compound *bhaktivāna/bhaktivāmsa*. Since the compound *bhaktivāna/bhaktivāmsa* mean ‘sharer=one who is sharing’ it is obvious that *bhakti* in this compound means ‘sharing’. The earliest independent use of the word *bhakti* one finds in the *Svetāśvatara Upaniṣad* (6.23) in the sense of ‘sharing/participation/belonging.’

The semantic field of the Vedic use of the words related to *bhakti* is visible in the *Nirukta* (7.4) of Yāska. *Bṛhaddevatā* (1.70-73) of Śaunaka explicitly uses expressions *bhakta* and *bhakti* in the sense of ‘sharer’ and ‘sharing’ respectively. The Muni-traya of Vyākaraṇa – Sūtrakāra Pāṇini, Vārttikakāra Kātyāyana and Bhāṣyakāra Patañjali – in their respective compositions – *Aṣṭādhyāyī*, *Vārttikas* and *Mahābhāṣya*– endorse and confirm the Vedic usage of *bhakti* and *bhakta* as ‘sharing’ and ‘sharer’ respectively.

3. The Conception of *Bhakti* in *Purāṇas*

Bhakti understood as devotion or love appears for the first time in the *Bhāgavata Purāṇa*. In the *Bhāgavata Mahātmya* 1.27 ff Nārada informs us how in this Kali Yuga he has wandered over the whole Earth and has failed to find *dharma*. At length (1.36) he arrives at the bank of the Yamunā, the scene of the exploits of Hari (i.e. Kṛṣṇa). There he finds two old men dying and a young woman (*taruṇī*) lamenting over them. In response to his inquiries she says: "(1.44) I am *Bhakti*. These two are considered to be my sons. They are *Jñāna* and *Vairāgya*, and have become decrepit through the influence of time...(1.47) I was born (*utpanna*) in *Draviḍa*; I grew up in *Karṇāṭaka*; went here and there in *Mahārāṣṭra*, then in *Gurjara* (Gujarat) I became old and worn. There, under the influence of these terrible times (*Kali Yuga*), my limbs were

mutilated by heretics (*pākhaṇḍa*), and with my sons I fell into a long feebleness. Since I came to *Vṛndāvana* I have recovered and am now young and beautiful. So that now I go about as I ought: a young woman of superb appearance." She goes on to ask why her two sons have not also become young. Nārada explains that she has been rejuvenated by the holy influence of *Vṛndāvana*, but that (1.61) *Jñāna* and *Vairāgya* still remain old, as there is no one who will accept them. It is clear that the *Bhāgavata Mahātmya* considers that the idea of *bhakti* was first taught in the south and then it moved to north. Historically considered the devotional form of *bhakti* originated in *cankam* poetry of South India. The Āḷvārs, the devotional bhakti saints and poets, who flourished in the Tamil country between the seventh and eighth century AD, took up many themes of this kind of *bhakti*. The Āḷvārs, in particular *Nammāḷvār*, the earliest of the *āḷvārs*, applied the devotional form of *bhakti* to the cowherd boy Kṛṣṇa, whose stories of amorous love were familiar to them through the popularity of *Harivaṃśa* and *Viṣṇu Purāṇa*. The *Bhāgavata Purāṇa* is an attempt to render into Sanskrit the devotional form of *bhakti* of the *āḷvārs*. Specific passages from the *Bhāgavata Purāṇa*, especially the *gopīs'* songs of longing for Kṛṣṇa, have been identified as based on recognizable sections of the poetry of the *āḷvārs*. The *Bhāgavata Purāṇa* stands apart from other *purāṇas* on the basis of its style and content, it can be confidently dated to the ninth or tenth century AD and assigned a southern provenance. Due to the popularity of the *Bhāgavata Purāṇa* and the influence of wandering preachers from the South such as Madhavendra Purī, the devotional form of Kṛṣṇa *bhakti* began to appear in Bengal and through North India in the late medieval period.

The notion of *bhakti* that has roots in the *Vedas* and finds expression in the *Śvetāśvatara Upaniṣad* and Śaunaka's *Bṛhaddevatā*, none of which originated in the south, is different from the southern notion of *bhakti*. The journey of *bhakti* as stated in the *Bhāgavata Mahātmya* 1.47 confirms that the southern notion of *bhakti* is different from the *bhakti* of the *Śruti* literature, which developed in the North India. It is the southern notion of *bhakti* that is captured in the definition of *bhakti* given in the *Nārada-Bhaktisūtras* 2, *Śāṅḍilyasūtras* 1.1.2. It is the southern understanding of devotional form of *bhakti* that is employed when Grierson writes regarding emergence of *bhakti* in India. When Hazariprasad Dvivedi used the Hindi phrase "*bhakti kā andolan*" (the *bhakti* movement) he also employed the southern idea of devotional form of *bhakti*.

4. Different Ontological Presuppositions of *Vedic Bhakti* and Devotional *Bhakti*

The ontological presupposition of *bhakti* in *Śvetāśvatara Upaniṣad* is different from the South Indian emotional devotion or devotional *bhakti*. The notion of *bhakti* in *Śvetāśvatara Upaniṣad* presupposes the *Vedic* ontology of the *Puruṣa Sūkta*. The first two mantras of the *Puruṣa Sūkta* (*Ṛgveda* 10.90.1-2) quoted verbatim in *Śvetāśvatara Upaniṣad* as mantras 3.14-15. The *puruṣa* of the *Puruṣa Sūkta* is a *samaṣṭi puruṣa*. This *puruṣa* encompasses the cosmos and also he is lodged in the heart of everyone in the cosmos (10.90.1). In the philosophy of the *Puruṣa Sūkta* the collectivity as a person is understood as *yajña puruṣa* (10.90.6-7). Since, the *Puruṣa* as a collectivity encompasses everything, all belong to it, and have share in it. That the *Puruṣa Sūkta* is advocating a conception of *samaṣṭi puruṣa*, i.e. a collectivity as person, like an institution as a person in modern terminology, fits well with the historical fact surrounding the *Vedas*. At the time of the *Ṛgveda* in particular and the *mantra* portion of the *Vedas* in general, people were moving away from clan formation of nomadic herdsmen to the institutional formation of settled agricultural people as the population had increased and people were spread out so much that relations of birth and alliance could no longer keep them together. The *yajña puruṣa* as the early *Vedic* conception of socio-political institution is also confirmed by the idea of socio-political distinction of *brāhmaṇa*, *rājanya*, *vaiśya* etc. introduced in the *Puruṣa Sūkta* (10.90.11-12) itself.

Bhagavadgītā accepts the ontology of the *Vedic samaṣṭi puruṣa* (collective person). Kṛṣṇa in the *Bhagavadgītā* is also *yajña puruṣa*, for Kṛṣṇa in 9.16 declares, "I am *yajña*." Like the *puruṣa* of the *Puruṣa Sūkta* the *Bhagavadgītā* presents Kṛṣṇa as a cosmic *yajña puruṣa* comprising everything in the universe.

There is an unbroken tradition of thinking from the *Ṛgveda* to the *Bhagavadgītā*, which has successfully developed a theory of collective institution as person, which encompasses all existents including multiplicity of all human beings and which is implanted in the heart of everything and everyone in the universe. It is this non-substance metaphysics of the *samaṣṭi puruṣa* (collective person) or institution as person, which is presupposed in the conception of *bhakti* in the *Bhagavadgītā*, so that *bhakti* is participation in or partaking in or sharing in the collective socio-political institution as person. *Bhakti* in the *Bhagavadgītā* is a socio-political conception of sharing and belonging analogous to the modern citizenship of a state.

The emotional devotion or devotional *bhakti* has different ontological presupposition. The Kṛṣṇa of devotional *bhakti* is not a *samaṣṭi puruṣa* (collective person) or institution as person. He is an *avatāra* or incarnation of Nārāyaṇa or Viṣṇu. What is important here is the human form in which the Nārāyaṇa or Viṣṇu incarnates. Neither the *Vedas* nor the Principal *Upaniṣads* ever mention the word *avatār* as a noun.

In the *Bhāgavata Purāṇabhakti* understood as emotional devotion is for the *Bhagavān* incarnated as Kṛṣṇa making it a theological conception.

This *avatāra* or incarnation of Nārāyaṇa or Viṣṇu, in the human form is distinct and different from other human beings who may be his *bhakta* "devotee." That is to say there is a dualism of the *bhakta* and the object of his *bhakti* 'devotion.' This may involve the separation of the two, i.e. separation of *bhakta* from the object of his devotion (*bhakti*). This comes out clearly in the *Bhāgavata Purāṇa* and it gives rise to *viraha-bhakti*. According to the *Bhāgavata Purāṇa*, in fact, such passionate pursuit constitutes both path and goal for the *gopīs*. So, *bhakti* in *Bhāgavata Purāṇa* involves dualism of *bhakta* and the object of *bhakti*, which may involve the separation of the two, i.e. the *bhakta* and the object of *bhakti* for heightening of *bhakti* leading to union of the two without losing their dualism.

From the discussion of the difference between the metaphysical presuppositions of two ideas of *bhakti*, i.e. earlier *Vedic* conception of *bhakti* and the later southern conception of *bhakti*, one can reasonably infer that the two notions *bhakti* are different, the first one meaning 'participation/partaking/belonging' and the later one meaning 'devotion/service/love.' The first one is socio-political, while the second one is theological.

5. Socio-political *Bhakti* in the *Bhagavadgītā*

The indication of the kind of conception of *bhakti* present in the *Bhagavadgītā* is given by Kṛṣṇa in the very first use of the term *bhakta* in 4.1-3: "I taught this imperishable Yoga to Vivasvat; Vivasvat taught it to Manu; Manu taught to Ikṣvāku. Thus handed down in succession, the King-sages (*rājarsayo*) learnt this. This Yoga, by long lapse of time, has been lost here, O harasser of foes. That same ancient Yoga is being today taught to you by Me, seeing that you are My sharer (*bhakta*) and friend (*sakhā*); for, this is the best secret." The significance

of reference to Vivasvat, Manu and Ikṣvāku is that the ancient yoga spoken of is to be found in Vedas, as the earliest reference to all of them is in it. The reference make it clear that the ancient yoga is handed down to *rājarsis* (royal sages) and it is a socio-political in nature and so is the idea of *bhakta* (sharer). So, *bhakti* is socio-political in nature in the *Bhagavadgītā* and it is not theological as understood in later devotional *bhakti* literature.

As the opening scene of the *Bhagavadgītā* is set in the context of war and the issue is the participation in the act of war, which is a socio-political act, it can reasonably inferred that the *Bhagavadgītā* is expounding the theory of socio-political institutional action.

Another important ground for this claim is that the knowledge given to Arjuna by Kṛṣṇa is *rājavidyā rājaguhyaṃ*, i.e. knowhow of administration, secrets of administration (9.2).

The first half of the chapter presents the individualist outlook of Duryodhana in upbeat mood, but the second half represents the clannish tribal outlook of Arjuna in a mood of despondency. The unfolding of the plot is indicating a political frame of the discussion.

On these four grounds coupled with the analysis of all the occurrences of expressions related to *bhakti*, *śaraṇa* and *āśraya* I draw the conclusion that *bhakti* in the *Bhagavadgītā* is understood in its early *Vedic* socio-political sense. The idea of *bhakti* as ‘sharing, participation, and belonging’ is introduced in the *Bhagavadgītā* as involved in the skill of administration of sovereign institution as person.

6. The Circular Structure of Metaphysics of *Bhakti*

The metaphysical peculiarity of *bhakti*, i.e. sharing of the Self and participation in the Self, where Self is the cosmic *yajña puruṣa*, is that it has the circular structure: the whole is fully in each of parts and each of parts is in the whole. This cannot be satisfied by any substance metaphysics, so *bhakti* cannot be explained by metaphysics of substance. The whole of cosmos conceived in the form of *yajña puruṣa* is not a totality of substances, but has its own metaphysical being of a circular structure.

This circular character of the metaphysics of *bhakti* is stated in many verses, e.g. *Bhagavadgīta* 6.29-31: “The Self abiding in all existents, and all existents (abiding) in the Self, sees he whose Self has been harnessed by Yoga, who sees the same everywhere. He who sees

Me everywhere and sees everything in Me, for him I do not get destroyed, nor for Me does he get destroyed. Whoso, established in unity, shares (*bhajaty*) Me who is established in all existents, that Yogin, always dwelling also, dwells in Me.” This circular structure of *bhakti* of whole in the part and part in the whole is presented once again in *Bhagavadgītā* 18.54-55: “Becoming Brahman, of serene self, he neither grieves nor desires, being same in all existents; he attains supreme share of Me (*madbhaktim*). By sharing (*bhaktyā*) he knowledgeably resolves Me upto that-ness, how much and what I am; then, knowing Me up to that-ness, he forthwith enters into Me.” Here the circle is that one who becomes *Brahman* attains the supreme share of the *samaṣṭi puruṣa* and by this sharing he enters into the *samaṣṭi puruṣa*.

The circle of *bhakti* is visible also when Kṛṣṇa explains in *Bhagavadgītā* 8.8-10 the form of *puruṣa*, who is obtained in the very being of man who has *bhakti* for it. The circle is that of ‘sharing’ and ‘reaching’. In *Bhagavadgītā* 8.22 the circular structure of *bhakti* emerges explicitly: “Now, that Highest Puruṣa, O son of Pritha, within Whom all existents dwell, by Whom all this is pervaded, is attainable by *anyabhakti*.” The circular structure *Bhakti* in the *Bhagavadgītā* is also spelled out by Kṛṣṇa in *Bhagavadgītā* 9.29: “...whoso share Me with participation, they are in Me, and I am also in them.” The institution as a person is in each existent and each existent is in the institution as person, as it is a cosmic institution.

The implication of the circular structure of *bhakti* is that it requires two aspects in *bhakti*: the *bhakta* is in the cosmic institution and in reverse the cosmic institution as person is in each *bhakta*.

Another implication of the circular structure is the equality of all before the institution as stated in 9.29, which is like, but not the same as, modern idea of equality before the law. The difference in the equality required in *bhakti* is that equality is not only equality of all existents for the cosmic institution, but also each *bhakta* is to see the same institution in each existent. The latter aspect of *bhakti* is stated many times, e.g. 6.29; 18.54. The former aspect of *bhakti* is that the institution as person is same towards all existents.

The idea of *bhakti* in the *Bhagavadgītā* is similar to but not the same as the idea of the unity of subjective consciousness and the objective order in Hegel’s *Philosophy of Right*¹ §146; §147. For Hegel conscious identity of the subject and the state is a condition for adequate functioning of the commonwealth, when this consciousness of identity

does not work, the state is in danger of falling apart. But according to the *Bhagavadgītā* this identity of self of *bhakta* and the *institution* as a person is a condition of participation in the institution.

In the metaphysics of *bhakti* the circle of participation of all in the *samaṣṭi puruṣa* and the *samaṣṭi puruṣa* being shared by each participant wholly, leads to at least two other circles.

7. Circularity of *Bhakti* and *Jñāna*

One of these two is the cycle of *bhakti* and *jñāna*: *bhakti* leads to *jñāna* ‘knowledgeable Resolve’² and vice versa. Kṛṣṇa in *Bhagavadgītā* 10.10 says: “To these, always harnessed, sharing (*bhajatām*) Me with feeling of fullness, I give that harnessing of intelligence (*buddhiyogaṃ*) by which they receive Me.” Acquiring the whole of *yajña puruṣa* as one’s share in *bhakti* ‘sharing’ is also acquiring of *jñāna* (knowledgeable Resolve). Kṛṣṇa in 10.11 declares: “Out of mere compassion for them, I, abiding in their Self, destroy the darkness born of ignorant irresolution, by the luminous lamp of knowledgeable resolve (*jñāna*).” The same point emerges when it was said to Arjuna by Kṛṣṇa in *Bhagavadgītā* 11.54: “But by undistracted sharing (*bhakti*) can I, in this way, be knowledgeably resolved and be seen in that-ness, and entered into, O harasser of foes.”

If *bhakti* (sharing) involves *jñāna*, then to complete the cycle, *jñāna* includes *bhakti*. *Bhagavadgītā* 13.10 mentions the following items as *jñāna* (knowledgeable resolve): “Unflinching sharing (*bhaktir avyabhicāriṇī*) in Me in Yoga of non-separation, resorting to solitary places (*viviktadeśasevitvam*), distaste for the congregation of men (*aratir janasaṃsadi*).” This clearly marks that the *bhakti* in the *Bhagavadgītā* is different from the *bhakti* as devotion or *prema* (love), which does not require *jñāna*, that evolved with *Bhāgavad Purāṇa* and came to prominence in later *Bhakti* movement of Northern India in late medieval period.

In the later *bhakti* movement *bhakti* was supposed to be a personal emotional relation of *bhakta* (devotee) with the object of his *bhakti* (devotion), but in actuality manifestation of *bhakti* (devotion) became public performances, which needed an audience, among which it created a communal identity. But the earlier form of *bhakti* as sharing of and participation in *samaṣṭi puruṣa* as one finds in the *Bhagavadgītā* was against a creation of such sectarian communal identity. That’s why *Bhagavadgītā* 13.10 declared *viviktadeśasevitvam aratir janasaṃsadi*

‘resorting to solitary places, distaste for the congregation of men’ as knowledgeable resolve (*jñāna*). Avoiding solitude and to seek company of crowd of men has inherent danger of becoming cause or reason of group politics or identity politics, which is inimical to being of institution as person which treats all equally.

Since *bhakti* is included in *jñāna* and in turn *jñāna* is included in *bhakti*, in *Bhagavadgītā* 15.19 we hear from the mouth of Kṛṣṇa: “He who, un-deluded, thus knowledgeably resolves (*jānāti*) Me, the Best Person, he, knowingly resolving all, shares (*bhajati*) Me with his whole being, O Bhārata.”

8. Circle of *Bhakti* and *Karma*

The cycle of *bhakti* also leads to the second cycle, which is that of *bhakti* and *karma*. First part of the circle is that *karma* leads to *bhakti*. This idea comes out in *Bhagavadgītā* 4.9-11: “Whoso feelingly knowledgeably resolves thus My divine birth and action in its essence is not born again on leaving this body (*tyaktvā dehaṃ*); he comes to Me, O Arjuna. With passion, fear and anger gone, mind absorbed in Me, dependent (*upāsītāḥ*) on Me, purified by the intensification (*tapas*) of knowledgeable resolve, many have reached My being. Whosoever in whatever manner enters Me, in the same manner I partake of (*bhajāmy*) them; My path do men follow in all manner O son of Pritha.” The issue discussed is regarding how does one acquire the being of institution as person, the *yajñapurusa*, or *adhiyajña* in oneself. The idea that is emerging in 4.9-11 is that performance of *yajñakarma* leads to *bhakti* in the sense of participation as well as sharing. The explanation is as follows:

In the *Bhagavadgītā* the discussion in terms of *prayānakāla* or *antakāla* and the movement soul *muktvākalevaram* (8.5) or *tyaktvā dehaṃ* (4.9) ‘abandoning the body’ is not really a discussion regarding what happens at death. In *Bhagavadgītā* 4.9 the event of *tyaktvā dehaṃ* ‘leaving the body’ does not mean death *mṛtyu*. Rather it means beginning of *yajña karma*, which is homologized with death. The beginning of *yajña-karma* is like the *Brahman* leaving the body and subsequently getting deposited in the fire of *yajña* as oblation as that is the form that the *Brahman* takes in the movement (4.24).

That *bhakti* requires action is stated explicitly by Kṛṣṇa in *Bhagavadgītā* 18.56-57: "Doing always all actions whatsoever, taking

shelter in Me (*madvyapāśrayaḥ*), by My Grace he reaches the eternal un-decaying Abode. Consciously vesting all actions on Me, regarding Me as the Supreme, taking shelter (*upāśritya*) of buddhi yoga, you continuously become conscious of Me." There is no denial of action to *bhakta*, rather he is spoken of as doing always all actions whatsoever (*sarvakarmāṇy api sadā kurvāṇo*). It is *karma* that leads to *bhakti*, as participation.

In 7.28 Kṛṣṇa explains that only the performers of pure action share the collective institution as person: "But, those born ones of pure deeds whose sin has come to an end, who are freed from the delusion of pairs, they share (*bhajante*) Me with a firm resolve." Not only *karma* leads to participation, but also *karma* leads to sharing the institution.

Kṛṣṇa further relates *karma* to *bhakti* in *Bhagavadgīta* 7.29 in the reverse way, i.e. *bhakti*, as sharing, prepares one for *karma*: "Whoever depending on Me (*māmāśritya*) strive for liberation from *jarā* and *marāṇa*, they feelingly knowledgeably resolve that *Brahman*, in full the Inner-Self and all action." Kṛṣṇa is speaking in very indirect (*atiparokṣa*) speech of deities here. Here *jarāmarāṇa* directly in a straightforward manner does not refer to ageing and dying. The expression *jarāmarāṇa* is used indirectly to refer to praise and origin of institutional action (*yajña-karma*). The meaning of *jarā* here is coming from *Rgveda* 1.27.10; 1.38.13 and 10.32.5. Yāska in *Nirukta* 10.8 explains: "*Jarā* means praise; it is derived from (the verb root) *jr*, meaning to praise." In *Nighaṇṭu* 3.14 the expression *jarate* is included in synonyms of *catuścatvāriṃśad arcatikarmāṇaḥ* 'fortyfour actions of praise.' Since, oldage was a matter of praise the expression *jarā* is also used for oldage.³ But Kṛṣṇa in *Bhagavadgītā* 7.29 uses the expression *jarā* in the sense of praise as the context is that of sharing the institution as person, i.e. *yajña puruṣa*. The action performed in the *yajña* is to be accompanied by the praise recitation for its *rūpasamṛddhi* "enrichment of the form" of *yajña-karma*. Similarly, the expression *marāṇa* is used in 7.29 in the sense of origin of *yajña-karma* as explained above. So, *jarāmarāṇamokṣāya* means 'for liberation from praise and origin of action,' which means that *jarāmarāṇa* 'praise and origin of action' is not attributed to the performer of these actions, rather these are vested on the institution as person (*yajña puruṣa*). This meaning fits well with what is stated in the verse. The expression *mām āśritya* means 'taking shelter under me,' i.e. taking shelter under the institution as person, i.e. *yajña puruṣa*. Those people, who taking shelter under

the institution as person make effort to free themselves from praise and action, i.e. actions of speech and body respectively, feelingly resolving fully that *Brahman*, as actions originate from *Brahman* and *Brahman* is established in *yajña* (3.15). They also realize the transcendental self, as "the Imperishable (*Akṣaram*) Supreme (*paramam*) *Brahman*'s own being is said to be the transcendent Self (*Adhyātma*)" (8.3). They also feelingly resolve all actions as "the discharge [of *Brahman*], which originates the being of existents, is called action (*Karma*)," (8.3). So, the *bhakti* as sharing the institution gives rise to *yajña karma*.

If *karma* leads to *bhakti*, then in reverse *bhakti* leads to *karma* by giving rise to fitness for *karma* in *bhakti*, as he is also to perform institutional action (*yajña karma*). *Yajña karma* emerges from *Brahman* according to *Bhagavadgītā* 3. 14-15: "*yajña* is born of action; penetratively knowledgeably resolve that action comes from *Brahman*." Hence, *Bhagavadgītā* 14.26 says regarding *bhakti*: "And he who serves Me with unflinching yoga of *bhakti*, he, crossing beyond those *guṇas*, is formed for manifestation of *Brahman*." *Brahma* is manifested in action. The second half of the circle requires that *bhakti* leads to fitness for *karma*.

The present interpretation must have created discomfiture in the traditional readers of the *Bhagavadgītā*. The present interpretation is based on the *Vedic* sources, which cannot be discussed here due to limitation of time. But let it be pointed out that the verses spoken by Kṛṣṇa in *Bhagavadgītā* are spoken in language of deities (*devavāṇi*), which is very indirect (*parokṣa*). *Bhagavadgītā* is firmly rooted in the Brāhmaṇical tradition in this regard. *Gopatha Brāhmaṇa* (1.1.1; 1.1.7; 1.3.19) states not less than 9 times: "The deities indeed love, as it were, the indirect (*parokṣa*) [names], and hate the direct (*pratyakṣa*) [names]." The same statement also occurs in *Śatapatha Brāhmaṇa* 14.6.11.2 (= *Bṛhadāraṇyaka Upaniṣad* 4.2.2). *Taittirīya Brāhmaṇa* (3.12.2; 3.12.4): "The deities indeed love, as it were, the indirect (*parokṣa*) [names]."

In the colophon at the end of every chapter the *Bhagavadgītā* is declared to be *Upaniṣad*. The expression *Upaniṣad* means 'hidden connection' (*Bṛhadāraṇyaka Upaniṣad* 3.9.26; *Chāndogya Upaniṣad* 1.13.4; 3.11.3; *Taittirīya Upaniṣad* 1.3.1; *Kena Upaniṣad* 4.7-9; *Śvetāśvatara Upaniṣad* 1.16). It also means *rahasyam* 'secret.' In *Nṛsimhatāpanī Upaniṣad* 8 it is said four times in succession *iti rahasyam*, instead of the earlier usual form *iti upaniṣad* as in *Taittirīya Upaniṣad* 2 and 3 and *Mahānārāyaṇa Upaniṣad* 62. 63. 64. In older passages also where mention is made of *Upaniṣad* texts, such expressions

are used as *guhya ādesāḥ* (*Chāndogya Upaniṣad* 3.5.2), *paramam guhyam* (*Kaṭha Upaniṣad* 3.17; *Śvetāśvatara Upaniṣad* 6.22), *vedaguhyā-upaniṣatsu guḍham* (*Śvetāśvatara Upaniṣad* 5.6), *guhyatamam* (*Maitrī Upaniṣad* 6.29).

The *Bhagavadgītā* itself declares the truth that what it declares is not on the surface, at the level of direct word meaning, which can be available to anyone. Rather its truth is *guhya*, hidden. The teaching of the *Bhagavadgītā* is described as *rahasyam* (4.3), i.e. secret. It is *rājaguhyam* (9.2), i.e. the administrative secret. It is *guhyānām jñānam* (10.38), i.e. hidden knowledgeable resolve. It is *paramamguhyamadhy-atmasamjñitam* (11.1), i.e. the most secret song of *adhyātma*. The *Bhagavadgītā* itself is *guhyatamaṁ sāstram* (15.20), i.e. the most secret instrument of instruction (text). According to the *Bhagavadgītā* (18.63) Arjuna was given *guhyād guhyataramjñānam*, i.e. knowledgeable resolve more secret than the secret one. The advice of Kṛṣṇa to Arjuna was *sarvaguhyatamaṁ* (18.64), i.e. the greatest of all secrets, *paramam guhyam* (18.68), and *guhyam param* (18.75), i.e. the ultimate secret.

One needs to master the process of interpretation of Kṛṣṇa's language in *Bhagavadgītā*, which is the language of deities (*devavāṇi*), to fathom its secret meaning, which is hidden in the words, some aspect of which is being explained the present essay.

9. Four Kinds of *Bhaktas*

Kṛṣṇa in 7.16 informs: "Four kinds of right-doing men share (*bhajante*) Me, O Arjuna: the distressed (*ārta*), the seeker of knowledgeable resolve (*jijñāsu*), the seeker of meaningful life (*arthārthī*), and the one who has knowledgeable resolve (*jñānī*), O lord of the Bharatas." Kṛṣṇa explains the *jñānī* in *Bhagavadgītā* 7.17: "Of them the one who has knowledgeable resolve, ever harnessed to and sharing the One (*ekabhaktir*), excels; for, excessively dear am I to the knowledgeable resolver, and he is dear to Me." Here the word *priya* 'dear' is used not in the sense of emotionally loved but in the sense of 'valuable,' or 'wanted' as in a repeated passage *Bṛhadāraṇyaka Upaniṣad* 2.4.5 and 4.5.6. Kṛṣṇa further clarifies in *Bhagavadgītā* 7.18: "Noble indeed are all these; but the one having knowledgeable resolve, I deem, is the very Self; for, with self remaining in yoga, he resorts to Me alone as the unsurpassed goal." Hence, a ranking of these four types of sharers is introduced implicitly in the *Bhagavadgītā* 7.17-18. Here the ranking is

done on the basis of how dear the institution is to the man, exhibited by exclusive continuous and constant service to and sharing in the institution, which in turn also shows how dear he is to the institution. On this scale the order of the four mentioned, *ārta jijñāsu arthārthī jñānī*, also indicates the position in ranking in increasing order. Hence, *jñānī* are ranked highest, while *ārta* is on lowest rank, for his share in the institution need not be continuous and constant and exclusive. Once his distress is ended he may end the relation with the institution. Similarly, *jijñāsā* of a *jijñāsu* may be due to curiosity and once the curiosity is over he may also end the relation with the institution, but he is superior in ranking because his motivation is purer than the *ārta*. The next in ranking *arthārthī* one who is seeking a meaningful life is superior because his motivation is purer and there is greater possibility of his being in the institution continuously to lead a meaningful life. The rank of *jñānī* is the highest because the institution as person is his own self.

There is further implication of there being four types of *bhaktas*. It is that the institution as a person must make institutional arrangement (1) for healthcare, calamity management, policing and redressal of *adharma* etc. to fulfill the requirement of *ārta*; (2) for education for those who are *jijñāsu*, (3) for family and economic life of *arthārthī*; and finally (4) administration of the institutional arrangement through the *jñānī*, as he is the very self of the institution.

Notes

- ¹ Trans. T. M. Knox, Oxford, 1942.
- ² The reasons for translating *jñāna* as 'knowledgeable Resolve' are given in Binod Kumar Agarwala, "The conception of *Jñāna* and its relation to Karma in the *Bhagavadgītā*," *Madhya Bharati*, Vol.72, January – June, 2017, [ISSN 0974-0066], pp.157-190.
- ³ This is not only true of the *Vedic* civilization, but also true of the ancient Greek civilization where old age was considered venerable and a matter of eulogy. Hans-Georg Gadamer writes in his *Praise of Theory: Speeches and Essays*, translated by Chris Dawson, New Haven, Yale University Press, 1998, p. 16: "The ancients practiced the festive custom of eulogy in which recognizably laudable things received public praise: Gods and heroes, love or fatherland, war and peace, justice, wisdom—even old age, which used to be something laudable and not, like today, something almost shameful, a defect, a cause of embarrassment."

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